

FEDERAL REGISTER

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Part I

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Commodity Credit Corporation
Consumer and Marketing Service
Education Office
Federal Aviation Administration
Federal Communications Commission
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Federal Power Commission
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Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission [Docket No. C-1549]

PART 13—PROHIBITED TRADE PRACTICES

Be-Len Manufacturing Co., Inc., et al.

Subpart—Misbranding or Mislabeling: § 13.1185 *Composition*: 13.1185-90 Wool Products Labeling Act; § 13.1212 *Formal Regulatory and Statutory Requirements*: 13.1212-90 Wool Products Labeling Act. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1852 *Formal Regulatory and Statutory Requirements*: 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Be-Len Manufacturing Co., Inc., et al., New York, N.Y., Docket C-1549, June 23, 1969]

In the Matter of Be-Len Manufacturing Co., Inc., a Corporation, and Samuel Ziegler and Arthur Ziegler, Individually and as Officers of Said Corporation

Consent order requiring a New York City manufacturer of men's and boys' wearing apparel to cease misbranding its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Be-Len Manufacturing Co., Inc., a corporation, and its officers, and Samuel Ziegler and Arthur Ziegler, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a) (2) of the Wool Products Labeling Act of 1939.

2. Failing to affix labels to samples, swatches or specimens of wool products used to promote or reflect the sale of wool products, showing in words and

figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 23, 1969.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[P.R. Doc. 69-8312; Filed, July 14, 1969; 8:49 a.m.]

[Docket No. C-1547]

PART 13—PROHIBITED TRADE PRACTICES

District Credit Clothing & Furniture, Inc., and Sidney Gimble

Subpart—Advertising falsely or misleadingly: § 13.75 *Free goods or services*: § 13.155 *Prices*: 13.155-95 *Terms and conditions*. Subpart—Neglecting, un- ing oneself and goods—Goods: § 13.1625 *Free goods or services*: § 13.1760 *Terms and conditions*. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1882 *Prices*: § 13.1905 *Terms and conditions*. Subpart—Securing signatures wrongfully: § 13.2175 *Securing signatures wrongfully*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, District Credit Clothing & Furniture, Inc., et al., Washington, D.C., Docket C-1547, June 16, 1969]

In the Matter of District Credit Clothing & Furniture, Inc., a Corporation, and Sidney Gimble, Individually and as an Officer of Said Corporation

Consent order requiring a Washington, D.C., retailer of clothing, furniture and appliances to cease misusing the word "free", inducing customers to sign partially completed contracts, misrepresenting finance charges and conditions, and failing to disclose the legal effect of installment payment default.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents District Credit Clothing & Furniture, Inc., a corporation, and its officers, and Sidney Gimble, individually and as an officer of said corporation, and respondents' agents, representatives, and em-

ployees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of clothing, furniture, appliances, and other items of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business.

2. Inducing or causing purchasers of respondents' merchandise to sign blank or partially completed sale contracts or any other contractual instruments which are not fully completed at the time such instruments are executed.

3. Representing, directly or by implication, the rate of a finance charge, the amount of downpayment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment unless respondents clearly and conspicuously disclose, in immediate conjunction with such representation, all of the following items:

- The cash price.
- The time price, consisting of the sum of the cash price, all finance charges, and any other extra charges before deducting any downpayment or allowance for a trade-in or otherwise.
- The downpayment, if any.
- The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.
- The rate of the finance charge expressed as an annual percentage rate.

4. Representing, directly or by implication, that a specific periodic consumer credit payment or installment payment can be arranged unless the respondents usually and customarily arrange credit payments or installments for that period and in that amount.

5. Failing to disclose orally and in writing to each customer who executes a conditional sale contract, or who otherwise purchases merchandise or services from respondents on credit, before such customer obligates himself to make any such credit purchase, all of the following items:

- The cash price of the merchandise or service purchased.
- The sum of any amounts credited as downpayment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e) plus the amount described in paragraph (f)) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondents in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For purposes of paragraphs 3 and 5 of this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [sections 106 and 107 of] Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

6. Failing to provide purchasers of respondents' merchandise with a copy of the executed sales contract or any other agreement at the time of execution by the purchaser.

7. Failing to disclose in writing on any conditional sale contract, promissory note or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument at respondents' option after a default in installment payments may be enforced in a court of law.

8. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' merchandise, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered. That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered. That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 16, 1969.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.
[F.R. Doc. 69-8313; Filed, July 14, 1969;
8:49 a.m.]

[Docket No. C-1517]

PART 13—PROHIBITED TRADE PRACTICES

General Nutrition Corp. et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service*: 13.170-52 Medicinal, therapeutic, healthful, etc.; 13.170-64 Nutritive.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies, sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, General Nutrition Corp. et al., Pittsburgh, Pa., Docket C-1517, June 20, 1969]

In the Matter of General Nutrition Corp., a Corporation, Also Trading as Natural Sales Co., and David B. Shakarian, Individually and as an Officer of Said Corporation

Order amending a previous consent order, 34 F.R. 7276, dated April 4, 1969, which prohibited a drug company from making certain exaggerated claims for its products by substituting a paragraph which clarified the order's compliance report provision.

The amended cease and desist order is as follows:

It is ordered. That the last paragraph of the Commission's order dated April 4, 1969, be, and it hereby is, amended to read as follows:

It is further ordered. That the respondents herein shall, on the date that this order shall become final in accordance with the terms of paragraph 7 of the Consent Agreement, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 20, 1969.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.
[F.R. Doc. 69-8314; Filed, July 14, 1969;
8:49 a.m.]

[Docket No. C-1548]

PART 13—PROHIBITED TRADE PRACTICES

Neemco Imperial, Ltd., et al.

Subpart—Misbranding or Mislabeling: § 13.1185 *Composition*: 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements*: 13.1212-80 Textile Fiber Products Identification Act. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1475 *Location*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Neemco Imperial, Ltd., trading as Victoria Gift Shop et al., San Francisco, Calif., Docket C-1548, June 23, 1969]

In the Matter of Neemco Imperial, Ltd., a Corporation, Trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., and Pearl L. Braha Mamiye and Mal Eli Mamiye, Individually and as Officers of Said Corporation

Consent order requiring a San Francisco, Calif., oriental gift shop to cease misbranding the fiber content of its textile fiber products and misrepresenting the location of its business.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered. That respondents Neemco Imperial, Ltd., a corporation, trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., or under any other name or names and its officers, and Pearl L. Braha Mamiye and Mal Eli Mamiye, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to set forth in disclosing the required fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings, or paddings.

It is further ordered. That respondents Neemco Imperial, Ltd., a corporation,

trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., or under any other name or names and its officers, and Pearl L. Braha Mamiye and Mal Eli Mamiye, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of floor coverings, handkerchiefs or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly representing in any manner through the use of such words as "main office London, England" or any terms of similar import, either with or without such names as Neemco Imperial, Ltd., Victoria Gift Shop and Victoria Gift Shops Ltd. that corporate respondent is a British firm or has offices in London, England.

2. Representing in any manner that corporate respondent is a foreign firm or that the corporate respondent has offices in England or in any other foreign country or misrepresenting in any manner the location of respondents' place of business.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 23, 1969.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[P.R. Doc. 69-8315; Filed, July 14, 1969;
8:49 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release Nos. 33-4982, 34-8638]

PART 231—INTERPRETATIVE RE- LEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THERE- UNDER

PART 241—INTERPRETATIVE RE- LEASES RELATING TO SECURI- TIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REG- ULATIONS THEREUNDER

Spin Offs and Shell Corporations

The Securities and Exchange Commission today made publicly known its concern with the methods being employed

by a growing number of companies and persons to effect distributions to the public of unregistered securities in possible violation of the registration requirements of the Securities Act of 1933 and of the antifraud and antimanipulative provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. The methods employed can take and in fact have taken a variety of patterns.

I. Frequently, the pattern involves the issuance by a company, with little, if any, business activity, of its shares to a publicly owned company in exchange for what may or may not be nominal consideration. The publicly owned company subsequently spins off the shares to its shareholders with the result that active trading in the shares begins with no information on the issuer being available to the investing public. Despite this lack of information, moreover, the shares frequently trade in an active market at increasingly higher prices. Under such a pattern, when the shares are issued to the publicly owned or acquiring company, a sale takes place within the meaning of the Securities Act and if the shares are then distributed to the shareholders of the acquiring company, that company may be an underwriter within the meaning of section 2(11) of the Act as a person "who purchased from an issuer with a view to . . . the distribution of any security" or as a person who "has a direct or indirect participation in any such undertaking."

While the distribution of the shares to the acquiring company's shareholders may not, in itself, constitute a distribution for the purposes of the Act, the entire process, including the redistribution in the trading market which can be anticipated and which may indeed be a principal purpose of the spin off, can have that consequence. It is accordingly the Commission's position that the shares which are distributed in certain spin offs involve the participation of a statutory underwriter and are thus, in those transactions, subject to the registration requirements of the Act and subsequent transactions in the shares by dealers, unless otherwise exempt, would be subject to the provisions of section 5 requiring the delivery of a prospectus during the 40- or 90-day period set forth in section 4(3).

The theory has been advanced that since a sale is not involved in the distribution of the shares in a spin off that registration is not required and that even if it is required, no purpose would be served by filing a registration statement and requiring the delivery of a prospectus since the persons receiving the shares are not called upon to make an investment judgment.

This reasoning fails, however, to take into account that there is a sale by the issuer and the distribution thereafter does not cease at the point of receipt by the initial distributees of the shares but continues into the trading market involving sales to the investing public at large. Moreover, it ignores what appears to be primarily the purpose of the spin off in numerous circumstances which

is to create quickly, and without the disclosure required by registration, a trading market in the shares of the issuer. Devices of this kind, contravene the purpose, as well as the specific provisions, of the Act which, in the words of the statutory preamble, are "to provide full and fair disclosure of the character of the securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof." In the circumstances of a spin off, when the shares are thereafter traded in the absence of information about the issuer, the potential for fraud and deceit is manifest.

This release does not attempt to deal with any problems attributable to more conventional spin offs, which do not involve a process of purchase of securities by a publicly owned company followed by their spin off and redistribution in the trading markets.

II. Another pattern has come to the Commission's attention in which certain promoters have acquired corporations which have ceased active operations, or which have little or no assets ("shell corporations"), and which have a substantial number of shares outstanding, generally in the hands of the public. Thereafter the promoters have engaged in activities to quickly increase the market value of their shareholdings. For example, in some cases promoters have initiated a program of acquisitions, transferring assets of dubious value to the "shell corporations" in exchange for substantial amounts of newly issued shares. This activity is frequently accompanied by publicity containing exaggerated or misleading statements and designed to stimulate interest of public investors in the company's shares in violation of the antifraud provisions of the Securities Exchange Act of 1934. Thereafter the market prices of these securities have risen sharply under circumstances which bear no relationship to the underlying financial condition and business activities of the company. In some of these cases the promoters or other corporate insiders, take advantage of the market activity and the price rise which they have generated, have sold their shares at the inflated prices to the public in violation of the registration and antifraud provisions of the Federal securities laws. Similar activities have also been noted in a number of cases involving shares which a publicly held company has spun off to its shareholders.

III. The activities discussed above generally can only be successfully accomplished through the efforts of brokers and dealers. Accordingly, brokers and dealers are cautioned to be particularly mindful of their obligations under the registration and antifraud provisions of the Federal securities laws with respect to effecting transactions in such securities. In this connection, where a broker or dealer receives an order to sell securities of a little-known, inactive issuer, or one with respect to which there is no current information available except possibly unfounded rumors, care must

be taken to obtain sufficient information about the issuer and the person desirous of effecting the trade in order to be reasonably assured that the proposed transaction complies with the applicable requirements. Moreover, before a broker or dealer induces or solicits a transaction he should make diligent inquiry concerning the issuer, in order to form a reasonable basis for his recommendation, and fully inform his customers of the information so obtained, or in the absence of any information, of that fact.

In the foregoing connection the Commission also calls attention to its release dated February 2, 1962, on the subject "Distribution by Broker-Dealers of Unregistered Securities" (Securities Act Release No. 4445, Securities Exchange Act Release No. 6721; 27 F.R. 1251, Feb. 10, 1962).

[SEAL]

ORVAL L. DuBOIS,
Secretary.

JULY 2, 1969.

[F.R. Doc. 69-8282; Filed, July 14, 1969;
8:46 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER I—ANCHORAGES

[CGFR 69-62]

PART 110—ANCHORAGE REGULATIONS

Subpart B—Anchorage Grounds

BARGE FLEETING AREA, HILLSBOROUGH BAY, TAMPA, FLA.

1. The Commander, 7th Coast Guard District, Miami, Fla., by letter dated May 13, 1969, requested the establishment of a Barge Anchorage Ground in Hillsborough Bay, Tampa, Fla. The reason for the request is that there is a heavy increase in barge traffic, and an anchorage is required to accommodate transient barges. A public notice dated March 6, 1969, was issued by the Commander, 7th Coast Guard District, Miami, Fla., describing the proposed anchorage. All known interested parties were notified and requested to comment on the proposal. Two objections were received. However, these objections were resolved, in that barges will be limited in the use of the anchorage for a period not in excess of 96 hours. Since the foregoing procedure afforded effective notice to all interested parties, publication of the notice of proposed rule making in the FEDERAL REGISTER is unnecessary. Therefore, the request to establish an anchorage ground for barges as described in 33 CFR 110.193(a) (5) below is granted, subject to the right to change the requirements and to amend the regulations if and when necessary in the public interest.

2. This document effectuates this request by adding a new § 110.193(a) (5) describing the limits of this anchorage ground.

3. In Subpart B of Part 110, § 110.193 is amended by adding a new paragraph (a) (5), following paragraph (a) (4), to read as follows:

§ 110.193 Tampa Bay, Fla.

(a) * * *

(5) *Barge Fleeting Area, Hillsborough Bay.* Located 400 feet west of Cut "D" Channel at a point beginning at latitude 27°54'34", longitude 82°26'35"; thence northerly 1,000 feet to latitude 27°54'43", longitude 82°26'40"; thence westerly 500 feet to latitude 27°54'41", longitude 82°26'45"; thence southerly 1,000 feet to latitude 27°54'32", longitude 82°26'40"; thence easterly 500 feet to the point of beginning.

NOTE: This area is reserved for transient barges only. Barges shall not occupy this anchorage for a period longer than 96 hours unless permission is obtained from the Captain of the Port for this purpose.

(Sec. 7, 38 Stat. 1059, as amended, sec. 6(g) (1) (A), 80 Stat. 937; 33 U.S.C. 471, 49 U.S.C. 1655(g) (1) (A); 49 CFR 1.4(a) (3) (1))

Effective date. This amendment shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

Dated: July 2, 1969.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 69-8310; Filed, July 14, 1969;
8:48 a.m.]

[CGFR 69-70]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Dunns Creek, Fla.

1. The Florida State Road Department by letter dated May 5, 1969, requested the Commander, 7th Coast Guard District to revise the operation regulations for the drawbridge across Dunns Creek near Palatka. A public notice dated May 13, 1969 setting forth the proposed revision of the regulations governing this drawbridge was issued by the Commander, 7th Coast Guard District and was made available to all persons known to have an interest in this subject.

2. After consideration of all comments submitted in response to this proposal the revision is accepted. Accordingly, 33 CFR 117.245(h) (25) is revised to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

(h) Waterways discharging into Atlantic Ocean south of Charleston. * * *

(25) Dunns Creek, Fla.; State Road Department of Florida bridge across Dunns Creek near Palatka. At least 3 hours' advance notice required.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.4(a) (3) (v))

Effective date. This revision shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

Dated: July 2, 1969.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 69-8265; Filed, July 14, 1969;
8:45 a.m.]

[CGFR 69-61]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Indian River, Fla.

1. The Commander, 7th Coast Guard District by letter dated May 13, 1969, requested that the Commandant revise the operation regulations in § 117.436 to eliminate the Cocoa drawbridge listed thereon. This drawbridge was removed April 23, 1969, and has been replaced by twin fixed bridges.

2. Accordingly, the heading and paragraph (a) of § 117.436 are revised to read as follows:

§ 117.436 Indian River, Fla.; Florida State Road Department bridges at Titusville, Eau Gallie, and Melbourne, and the National Aeronautics and Space Administration bridge at Addison Point.

(a) Except as provided in paragraphs (b) and (c) of this section, the owner of or agency controlling the bridges at Titusville, Addison Point, Eau Gallie, and Melbourne shall not be required to open the drawspans between 6:45 a.m. and 7:45 a.m. and between 4:15 p.m. and 5:45 p.m., Monday through Friday of each week.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.4(a) (3) (v))

Effective date. This revision shall become effective upon the date of publication in the FEDERAL REGISTER.

Dated: July 2, 1969.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 69-8266; Filed, July 14, 1969;
8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 742—CODE OF ETHICAL CONDUCT

Miscellaneous Amendments

Part 742 is being amended in several respects to delegate additional functions to the Ethical Conduct Counselor and in order to make changes for the purpose of clarification. These amendments were approved by the Civil Service Commission on July 3, 1969, and are effective upon publication in the FEDERAL REGISTER.

I. Section 742.735-26(b) (5) is amended to change the designation Postmaster General to Ethical Conduct Counselor.

§ 742.735-26 Conflicts of interest.

(b) *Employment after separation.* . . .

(5) Notwithstanding subparagraphs (1) and (2) of this paragraph, when a particular matter involved is in a scientific or technical field and if the Ethical Conduct Counselor certifies in writing that it is in the national interest and the certification is published in the *FEDERAL REGISTER*, a former officer or employee, including a former special Government employee, with outstanding scientific or technical qualifications may act as attorney or agent or appear personally.

NOTE: The corresponding Postal Manual section is 742.262e.

II. Section 742.735-27(a) (1) is amended to change the designation Postmaster General to Ethical Conduct Counselor; and paragraph (b) (5) thereof is amended to clarify a cross reference.

§ 742.735-27 Dealings with public.

(a) *Giving endorsements.* (1) An employee shall not, with or without compensation, give an endorsement to any business, enterprise, or product which may give rise to any inference or indication that such business, enterprise, or product is officially endorsed by this Department or the United States, without special permission from the Ethical Conduct Counselor.

(b) *Permitted activities.* . . .

(5) Soliciting for fund raising drives for civic, religious, fraternal auxiliaries, clubs, and kindred organizations so long as they do not solicit while on duty, or solicit while wearing their uniform or any insignia or badge or in any way identify themselves as postal employees, or solicit from patrons with whom they have recurring official contact, or use their postal position to influence collections. See §§ 741.73, 742.256, 742.295, and 742.296 of the Postal Manual.

NOTE: The corresponding Postal Manual sections are 742.271a and 742.272e, respectively.

III. In § 742.735-54 the opening sentence of paragraph (a) is amended to change the designation Postmaster General to Ethical Conduct Counselor.

§ 742.735-54 Exclusions.

(a) Employees in positions listed in § 742.735-52 (c) and (d) of this chapter may be excluded from the reporting requirement when the Ethical Conduct Counselor determines that:

NOTE: The corresponding Postal Manual section is 742.54a.

IV. Section 742.735-61(b) is amended to change the designation Postmaster General to Ethical Conduct Counselor.

§ 742.735-61 Special Government employees required to submit statements.

(b) The financial interests of the special Government employees which the Ethical Conduct Counselor determines are relevant in the light of the duties he is to perform.

NOTE: The corresponding Postal Manual section is 742.61b.

V. Section 742.735-62 is amended to change the designation Postmaster General to Ethical Conduct Counselor.

§ 742.735-62 Exceptions.

The Ethical Conduct Counselor may waive the requirement in § 742.735-61 above for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this section consultant and expert have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.

NOTE: The corresponding Postal Manual section is 742.62.

VI. Section 742.735-71 is amended by adding new paragraph (f) to state that the Ethical Conduct Counselor may, in proper cases, make exceptions to the requirements or prohibitions of Part 742.

§ 742.735-71 Ethical Conduct Counselor and Deputy Ethical Conduct Counselors.

(f) Unless prohibited by law or Executive order, or inconsistent with 5 CFR Part 735, the Ethical Conduct Counselor may make exception to the requirements or prohibitions in this Part, for good cause shown.

NOTE: The corresponding Postal Manual section is 742.716.

(5 U.S.C. 301, 39 U.S.C. 501, Executive Order 11222, dated May 8, 1965)

DAVID A. NELSON,
General Counsel.

[F.R. Doc. 69-8279; Filed, July 14, 1969; 8:46 a.m.]

Title 7—AGRICULTURE

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., Rev. 1, Amdt. 13]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—General Regulations Governing Price Support for the 1964 and Subsequent Crops

MISCELLANEOUS AMENDMENTS

The regulations issued by the Commodity Credit Corporation published in 31 F.R. 5941, 32 F.R. 7843, 9301, 10910, and 13376, and 33 F.R. 222, 299, 2564, 5659, 6097, 8220, 12821, and 16142, and 34 F.R. 1228 containing the General Regulations Governing Price Support for the 1964 and Subsequent Crops of Grains and Similarly Handled Commodities are hereby amended as follows:

1. Paragraph (a) of § 1421.53 is amended to provide for using Purchase Agreement (Form CCC-614) by producer when notifying county office of intention to sell a commodity to CCC. The amended paragraph (a) reads as follows:

§ 1421.53 Eligibility requirements.

(a) *Requesting price support.* To obtain price support on an eligible commodity, a producer must request a loan on his eligible commodity, or notify the ASCS county office of his intention to sell his eligible commodity by executing and delivering to the county office a Purchase Agreement (Form CCC-614), no later than the maturity date specified in the applicable commodity supplement.

2. Paragraph (c) of § 1421.55 is amended to define situations where the county committee may authorize a later period of availability or date of disbursement on an individual basis. The amended paragraph (c) reads as follows:

§ 1421.55 Program availability, disbursement and maturity of loans.

(c) *Availability and maturity dates.* Availability and maturity dates applicable to loans and purchases will be specified in the annual commodity supplements to the regulations in this subpart. If the time for repayment of the loan indebtedness of warehouse storage loans for any crop of a commodity is extended, a producer who does not have a loan and wishes to participate in the extended warehouse loan program must request a warehouse storage loan on or before the final loan availability date

specified in the applicable commodity supplement and disbursement of the warehouse storage loan shall be completed not later than the original maturity date. A producer who wishes to convert a farm storage loan or part thereof into a warehouse storage loan in order to participate in the extended warehouse loan program must request approval of the county committee for such conversion, obtain its consent to deliver the commodity subject to the farm stored loan or other eligible commodity to an approved warehouse and deliver acceptable warehouse receipts to the county office on or before the original maturity date specified in the applicable commodity supplement; disbursement of the warehouse storage loan shall be completed not later than the original maturity date (with settlement as provided in paragraph (d) of § 1421.67). Notwithstanding any of the provisions of this § 1421.55, the county committee may authorize on an individual producer basis a later date of disbursement during the 30-day period following the original maturity date in emergency situations, such as illness, road conditions or similar emergency situations. Whenever the final date of availability or the maturity date falls on a nonworkday for ASCS county offices, the applicable final date shall be extended to include the next workday. CCC may, by public announcement prior to the applicable loan maturity date, extend the time for repayment of the loan indebtedness with respect to warehouse storage loans secured by the pledge of one or more of the following commodities of the 1967 or subsequent crops: Barley, corn, grain sorghum, oats, soybeans, and wheat; if any such loan maturity date is extended, CCC will pay the storing warehouse, at the rates specified in the applicable CCC storage agreement, any charges which have accrued and are unpaid through the original loan maturity date with respect to the commodity pledged to secure the extended loan indebtedness and the amount so paid shall be for the account of the producer and shall become a part of the loan indebtedness except that the producer will not be required to pay interest to CCC thereon; storage charges which accrue after the original loan maturity date with respect to the above-named commodities securing repayment of extended warehouse storage loans shall be for the account of CCC. CCC may at any time accelerate the time for repayment of a price support loan indebtedness; in the event of any such acceleration, CCC will give a producer affected thereby notice of such acceleration at least 10 days in advance of the accelerated loan maturity date.

3. Paragraph (d) of § 1421.67 is amended to provide that transfer of a farm stored loan to a warehouse stored loan during the 30 day period immediately following the maturity date shall be permitted only under emergency situations. The amended paragraph (d) reads as follows:

§ 1421.67 Farm storage loans.

(d) *Transfer from farm storage loan to warehouse storage loan.* Upon request by the producer, the county committee may approve the conversion of a farm storage loan or part thereof into a warehouse storage loan at any time during the loan period. The county committee may also approve conversion of a farm storage loan or part thereof to a warehouse storage loan during the 30-day period after the maturity date in emergency situations, such as insect infestation that cannot be controlled, danger of flood, damage to the storage structure, loss of control of the storage structure or failure to transfer before the maturity date due to illness, road conditions or similar emergency situations. In the case of emergency transfers the producer must make the request in writing describing the emergency. Conversion of the farm storage loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse storage loan and the immediate payment by the producer of the amount by which the warehouse storage loan is less than the farm storage loan or part thereof plus interest. Any amounts due the producer shall be disbursed by the county office.

4. Paragraph (d) of § 1421.69 is amended to define situations under which a commodity may be delivered before maturity date. The amended paragraph (d) reads as follows:

§ 1421.69 Liquidation of farm storage loans.

(d) *Delivery before maturity date.* If the producer loses control of the storage structure, there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm the commodity may be delivered before the maturity date of the loan with prior approval by the county committee. Settlement will be made with the producer as provided in § 1421.72.

5. Paragraph (b)(2) of § 1421.71 is amended to provide that in the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office not later than the day after maturity, warehouse receipts for the quantity of the commodity he elects to sell to CCC. The amended paragraph (b)(2) reads as follows:

§ 1421.71 Purchases from producers.

(b) *Delivery period.* In the case of an eligible farm stored commodity, the producer must make delivery of the commodity within the period of time after the loan maturity date for the kind of commodity as specified in delivery instructions issued by the county office unless the county office determines that more time is needed for delivery. Delivery shall be made to the location specified in such instructions. In the case of eligible commodities, except rice, stored in an approved warehouse, the

producer must submit to the county office not earlier than 10 days before the maturity date but not later than the day after the maturity date, warehouse receipts for the quantity of the commodity he elects to sell to CCC. Notwithstanding any of the provisions of this § 1421.71, in the case of an eligible farm stored commodity covered by an approved Purchase Agreement (Form CCC-614), the county committee may, on request of the producer authorize delivery of the commodity before the maturity date for the commodity if the producer loses control of the storage structure, there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure making it unsafe to continue storage of the commodity on the farm.

(Secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 401, 403, 405, 63 Stat. 1051, as amended; 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1421, 1423, and 1425)

Effective date: Upon publication in the Federal Register.

Signed at Washington, D.C., on July 9, 1969.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 69-8291; Filed, July 14, 1969; 8:47 a.m.]

PART 1427—COTTON

Subpart—1969 Crop Supplement to Cotton Loan Program Regulations

The Cotton Loan Program Regulations issued by Commodity Credit Corporation and containing the regulations of a general nature with respect to loan operations for cotton are supplemented for 1969 crop cotton as follows:

Sec.	Purpose.
1427.1521	Schedule of base loan rates for eligible 1969 crop, upland cotton by warehouse location.
1427.1522	Schedule of premiums and discounts for grade and staple length of eligible 1969 crop upland cotton.
1427.1523	Schedule of premiums and discounts for micronaire readings on 1969 crop upland cotton.
1427.1524	Schedule of loan rates for eligible quantities of 1969 crop extra long staple cotton by warehouse location.

AUTHORITY: The provisions of this subpart issued under secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 103, 401, 63 Stat. 1051, as amended; 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1444, 1421.

§ 1427.1521 Purpose.

This subpart is for the purpose of announcing that loans will be available on upland and extra long staple cotton of the 1969 crop under the terms and conditions stated in the Cotton Loan Program Regulations issued by Commodity Credit Corporation and contained in this Part 1427. This subpart also contains schedules to be used in determining loan rates on 1969 crop cotton.

§ 1427.1522 Schedule of base loan rates for eligible 1969 crop upland cotton by warehouse location.

ALABAMA			ALABAMA—Continued			GEORGIA		
City	County	Base mid-dling white inch loan rate	City	County	Base mid-dling white inch loan rate	City	County	Base mid-dling white inch loan rate
Akron	Hale	20.45	Samson	Geneva	20.45	Adairsville	Bartow	20.65
Albertville	Marshall	20.55	Sealtsboro	Jackson	20.45	Adel	Cook	20.45
Alceville	Pickens	20.40	Section	do	20.45	Alamo	Wheeler	20.55
Altoona	Etowah	20.60	Selma	Dallas	20.45	Albany	Dougherty	20.55
Andalusia	Covington	20.45	Sheffield	Colbert	20.40	Allenstown	Wilkinson	20.65
Anniston	Calhoun	20.09	Siocomb	Geneva	20.45	Ambrone	Coffee	20.55
Arab	Marshall	20.55	Stevenson	Jackson	20.45	Americus	Sumter	20.55
Athens	Limestone	20.45	Sulligent	Lamar	20.40	Arabi	Crisp	20.55
Atmore	Escambia	20.40	Sweet Water	Marengo	20.40	Arlington	Calhoun	20.45
Attalla	Etowah	20.60	Sylacanga	Talladega	20.60	Ashburn	Turner	20.55
Belle Mina	Limestone	20.45	Talladega	do	20.60	Athens	Clarke	20.45
Berry	Fayette	20.45	Talladega	Elmore	20.55	Atlanta	Fulton	20.65
Birmingham	Jefferson	20.45	Troy	Pike	20.45	Augusta	Richmond	20.70
Blountsville	Blount	20.55	Tusculum	Colbert	20.40	Bartow	Jefferson	20.65
Boaz	Marshall	20.55	Tuskegee	Macon	20.55	Baxley	Appling	20.55
Boliger	Greene	20.40	Union Springs	Bullock	20.55	Blakely	Early	20.45
Brantley	Crenshaw	20.45	Vernon	Perry	20.45	Bronwood	Terrell	20.55
Brent	Bibb	20.45	Wetumpka	Lamar	20.40	Brooklet	Bulloch	20.65
Brewton	Escambia	20.40	Winfield	Elmore	20.55	Buena Vista	Marion	20.65
Brundidge	Pike	20.45		Marion	20.40	Butler	Taylor	20.65
Camden	Wilcox	20.60				Byronville	Dooly	20.55
Centre	Cherokee	20.40				Cadwell	Laurens	20.65
Centerville	Bibb	20.45				Calo	Grady	20.45
Clayton	Barbour	20.55				Camilla	Mitchell	20.45
Collinsville	De Kalb	20.45				Carrollton	Carroll	20.65
Columbia	Houston	20.45				Cedartown	Polk	20.65
Cordova	Walker	20.45				Chamblee	Dodge	20.65
Cottonwood	Houston	20.45				Chester	do	20.65
Cullman	Cullman	20.45				Claxton	Evans	20.55
Decatur	Morgan	20.45				Cochran	Bleckley	20.65
Demopolis	Marengo	20.40				Coleman	Randolph	20.45
Dodman	Houston	20.45				Colquitt	Miller	20.45
Dottin	Jackson	20.45				Columbus	Muscogee	20.65
Eclectic	Elmore	20.55				Comer	Madison	20.70
Elba	Coffee	20.45				Concord	Pike	20.65
Elkton	Limestone	20.45				Conyers	Rockdale	20.65
Enterprise	Coffee	20.45				Cordele	Crisp	20.55
Ethelville	Pickens	20.40				Coverdale	Turner	20.55
Eufaula	Barbour	20.55				Covington	Newton	20.65
Eutaw	Greene	20.40				Cuthbert	Randolph	20.45
Evergreen	Conecuh	20.40				Davidsboro	Washington	20.65
Fayette	Fayette	20.45				Dawson	Terrell	20.55
Florida	Covington	20.45				De Soto	Sumter	20.55
Fort Deposit	Lowndes	20.45				Dexter	Laurens	20.65
Fort Payne	De Kalb	20.55				Doerun	Colquitt	20.45
Frison City	Monroe	20.40				Donalsonville	Seminole	20.45
Gadsden	Etowah	20.60				Douglas	Coffee	20.55
Georgiana	Butler	20.45				Dublin	Laurens	20.65
Geraldine	De Kalb	20.55				Dudley	do	20.65
Goodway	Monroe	20.40				Eastman	Dodge	20.65
Gordo	Pickens	20.40				East Point	Fulton	20.65
Gothen	Pike	20.45				Edison	Calhoun	20.45
Greenbrier	Limestone	20.45				Elberton	Elbert	20.70
Greensboro	Hale	20.45				Elko	Houston	20.65
Greenville	Butler	20.45				Ellaville	Schley	20.65
Gusterville	Marshall	20.55				Findlay	Dooly	20.55
Haleyville	Winston	20.45				Fitzgerald	Ben Hill	20.55
Hamilton	Marion	20.40				Fort Gaines	Clay	20.45
Hartford	Geneva	20.45				Fort Valley	Peach	20.65
Hartselle	Monroe	20.45				Franklin	Bibb	20.65
Havana Junction	Hale	20.45				Funston	Colquitt	20.45
Headland	Henry	20.45				Gay	Meriwether	20.65
Hollywood	Jackson	20.45				Glenville	Tattnall	20.55
Huntsville	Madison	20.45				Greenville	Meriwether	20.65
Hurtleboro	Russell	20.60				Griffin	Spalding	20.65
Jasper	Walker	20.45				Haralson	Coweta	20.65
Kenosha	Lamar	20.40				Hawkinsville	Wilkes	20.65
Lafayette	Chambers	20.60				Hazlehurst	Jeff Davis	20.65
Lacksville	Jackson	20.45				Hogansville	Troup	20.65
Linden	Marengo	20.40				Holmerville	Pike	20.65
Livinston	Sumter	20.40				Ideal	Macon	20.65
Louisville	Barbour	20.55				Jefferson	Jackson	20.70
Luttrell	Crenshaw	20.45				Jeffersonville	Twiggs	20.65
McCallough	Escambia	20.40				Jesup	Wayne	20.55
Madison	Madison	20.45				Kingston	Bartow	20.65
Mapleville	Geneva	20.45				La Grange	Troup	20.65
Marion	Chilton	20.45				Lavonia	Franklin	20.70
Milport	Perry	20.45				Lawrenceville	Gwinnett	20.65
Mobile	Lamar	20.40				Lenox	Cook	20.45
Monroeville	Mobile	20.80				Leslie	Sumter	20.55
Montgomery	Monroe	20.40				Locust Grove	Henry	20.65
Moundville	Montgomery	20.45				Loganville	Walton	20.65
Newbern	Hale	20.45				Louisville	Jefferson	20.65
New Hope	do	20.45				Lumpkin	Stewart	20.55
Newville	Madison	20.45				Luthersville	Meriwether	20.65
Northport	Henry	20.45				Lyerly	Chattooga	20.65
Notasulga	Tuscaloosa	20.45				Lyons	Toombs	20.55
Onusta	Macon	20.55				McDonough	Henry	20.65
Opelika	Blount	20.55				Macon	Bibb	20.65
Opp	Lee	20.60				Madison	Morgan	20.65
Parula	Covington	20.45				Manassas	Newton	20.65
Phil Campbell	Sumter	20.40				Marshallville	Macon	20.65
Pinecard	Franklin	20.40				Meigs	Thomas	20.45
Pinehill	Dale	20.45				Metter	Candler	20.65
Red Bay	Jackson	20.45				Midville	Burke	20.65
Reform	Franklin	20.40				Milledgeville	Baldwin	20.65
Rogersville	Pickens	20.40				Millen	Jenkins	20.65
Russellville	Lauderdale	20.40				Monroe	Walton	20.65
Samantha	Franklin	20.40				Montezuma	Macon	20.65
	Tuscaloosa	20.45				Morven	Brooks	20.45

RULES AND REGULATIONS

GEORGIA—Continued

City	County	Basic mid- diling white inch loan rate
Moultrie	Colquitt	20.45
Norman Park	do	20.45
Ocella	Irwin	20.55
Oglethorpe	Macon	20.65
Omega	Tift	20.55
Parrott	Terrell	20.55
Pelham	Mitchell	20.45
Pinehurst	Dooly	20.55
Pineola	Bartow	20.65
Pine Mountain	Harris	20.65
Pineview	Wilcox	20.55
Pitts	do	20.55
Plains	Sumter	20.55
Portal	Bulloch	20.65
Poulan	Worth	20.55
Quitman	Brooks	20.45
Rebecca	Turner	20.55
Reitz	Laurens	20.65
Reynolds	Taylor	20.65
Rochelle	Wilcox	20.55
Rockmart	Polk	20.65
Rome	Floyd	20.65
Royston	Franklin	20.70
Rutledge	Morgan	20.65
Sandersville	Washington	20.65
Sasser	Torrell	20.55
Savannah	Chatham	20.65
Secolia	Coweta	20.65
Shady Dale	Jasper	20.65
Shelman	Randolph	20.45
Shingle	Worth	20.55
Social Circle	Walton	20.65
Soperton	Trenton	20.65
Sparta	Hancock	20.65
Statesboro	Bulloch	20.65
Swainsboro	Emmanuel	20.65
Sycamore	Turner	20.55
Sylvania	Scriven	20.65
Sylvester	Worth	20.55
Tennille	Washington	20.65
Thomson	McDuffie	20.70
Tifton	Tift	20.55
Twin City	Emmanuel	20.65
Unadilla	Dooly	20.55
Uvalde	Montgomery	20.55
Valdosta	Lowndes	20.45
Vidalia	Toombs	20.55
Vienna	Dooly	20.55
Villa Rica	Carroll	20.65
Wadley	Jefferson	20.65
Warrenton	Warren	20.70
Warwick	Worth	20.55
Washington	Wilkes	20.70
Watkinsville	Oconee	20.70
Waynesboro	Burke	20.65
Winder	Barrow	20.70
Woodbury	Meriwether	20.65
Wrens	Jefferson	20.65
Wrightsville	Johnson	20.65
Yatesville	Upson	20.65
Zebulon	Pike	20.65

LOUISIANA

City	Parish	Basic mid- diling white inch loan rate
Alexandria	Rapides	20.30
Bernice	Union	20.30
Cheneyville	Rapides	20.30
Coushatta	Red River	20.30
Delhi	Richland	20.35
Ferriday	Concordia	20.35
Franklinton	Washington	20.35
Haynesville	Calhoun	20.30
Homer	do	20.30
Lake Providence	East Carroll	20.35
Mansfield	do	20.35
Monroe	Quachita	20.35
Natchitoches	Natchitoches	20.35
Newellton	Tensas	20.35
New Orleans	Orleans	20.35
Oak Grove	West Carroll	20.35
Opelousas	St. Landry	20.35
Plain Dealing	Boisier	20.35
Rayville	Richland	20.35
Shreveport	Caddo	20.35
Tallulah	Madison	20.35
Winnaboro	Franklin	20.35

MISSISSIPPI

City	County	Basic mid- diling white inch loan rate
Aberdeen	Monroe	20.40
Amory	do	20.40
Batesville	Panola	20.40
Baton Rouge	Humphreys	20.35
Booneville	Prentiss	20.40
Brookhaven	Lumberton	20.35
Canton	Madison	20.40
Carters	Leake	20.40
Clarksdale	Coahoma	20.35
Cleveland	Bolivar	20.35
Columbia	Marion	20.35
Columbus	Lawrence	20.40
Como	Panola	20.40
Corinth	Alcorn	20.40
Drew	Sunflower	20.35
Durant	Holmes	20.40
Flora	Madison	20.35
Forest	Scott	20.35
Greenville	Washington	20.35
Greenwood	LeFlore	20.35
Grenada	Grenada	20.40
Gulfport	Harrison	20.35
Hattiesburg	Forrest	20.35
Hollandale	Washington	20.35
Holly Springs	Marshall	20.40
Houston	Chickasaw	20.40
Indianola	Sunflower	20.35
Inverness	do	20.35
Itta Bena	LeFlore	20.35
Jackson	Hinds	20.35
Kosciusko	Attala	20.40
Laurel	Jones	20.35
Leland	Washington	20.35
McComb	Pike	20.35
Macon	Noxubee	20.40
Magee	Simpson	20.35
Magnolia	Pike	20.35
Marks	Quitman	20.35
Meridian	Lauderdale	20.40
New Albany	Union	20.40
Newton	Newton	20.35
Okolona	Chickasaw	20.40
Oxford	Lafayette	20.40
Philadelphia	Neshoba	20.40
Pontotoc	Pontotoc	20.40
Prentiss	Jefferson Davis	20.35
Quitman	Clarke	20.35
Ripley	Tippah	20.40
Rolling Fork	Sharkey	20.35
Rosedale	Hollier	20.35
Ruleville	Sunflower	20.35
Shaw	Bolivar	20.35
Shelby	do	20.35
Shuqualak	Noxubee	20.40
Sledge	Quitman	20.35
Summit	Pike	20.35
Tunica	Tunica	20.35
Tupelo	Lee	20.40
Tutwiler	Tallahatchie	20.35
Tylertown	Walsh	20.35
Union	Newton	20.40
Vicksburg	Warren	20.35
West Point	Clay	20.40
Yazoo City	Yazoo	20.35

MISSOURI

City	County	Basic mid- diling white inch loan rate
Arbyrd	Dunklin	20.35
Caruthersville	Pemiscot	20.35
Charleston	Mississippi	20.35
Gideon	New Madrid	20.35
Hayti	Pemiscot	20.35
Kennett	Dunklin	20.35
Lilbourn	New Madrid	20.35
Malden	Dunklin	20.35
Portageville	New Madrid	20.35
Sikeston	Scott	20.35

NEW MEXICO

City	County	Basic mid- diling white inch loan rate
Artesia	Eddy	20.15
Carlsbad	do	20.15
Deming	Luna	20.10
Las Cruces	Dona Ana	20.15
Lovington	Lea	20.20
Roswell	Chaves	20.15

NORTH CAROLINA

City	County	Basic mid- diling white inch loan rate
Battleboro	Nash	20.75
Bethel	Pitt	20.75
Bladenboro	Bladen	20.75

NORTH CAROLINA—Continued

City	County	Basic mid- diling white inch loan rate
Butner	Granville	20.75
Candor	Montgomery	20.80
Charlotte	Mecklenburg	20.80
Cherryville	Gaston	20.80
Clayton	Johnston	20.75
Clinton	Sampson	20.75
Conway	Northampton	20.75
Dunn	Harnett	20.75
Durham	Durham	20.80
Edenton	Chowan	20.75
Enfield	Halifax	20.75
Farmville	Pitt	20.75
Fayetteville	Cumberland	20.75
Franklinton	Franklin	20.75
Gastonia	Gaston	20.80
Gibson	Scotland	20.75
Goldboro	Wayne	20.75
Greenville	Pitt	20.75
Henderson	Vance	20.75
Jackson	Northampton	20.75
Kings Mountain	Cleveland	20.80
Laurel Hill	Scotland	20.75
Laurinburg	do	20.75
Lewiston	Bertie	20.75
Lincolnton	Lincoln	20.80
Littleton	Halifax	20.75
Louisburg	Franklin	20.75
Lumberton	Robeson	20.75
Maxton	do	20.75
Monroe	Union	20.80
Mooreville	Iredell	20.80
Morven	Anson	20.80
Mount Olive	Wayne	20.75
Murfreesboro	Hartford	20.75
Nashville	Nash	20.75
Norfolk	Catawba	20.80
Newton	Robeson	20.75
Parkton	do	20.75
Pembroke	do	20.75
Pinebluffs	Edgecombe	20.75
Raeford	Hoke	20.75
Raleigh	Wake	20.75
Red Springs	Robeson	20.75
Rich Square	Northampton	20.75
Roseboro	Halifax	20.75
Rockingham	Richmond	20.80
Rowland	Robeson	20.75
St. Paul	do	20.75
Salisbury	Rowan	20.80
Sanford	Lee	20.80
Scotland Neck	Halifax	20.75
Seaboard	Northampton	20.75
Selma	Johnston	20.75
Severn	Northampton	20.75
Shelby	Cleveland	20.80
Smithfield	Johnston	20.75
Southern Pines	Moore	20.80
Statesville	Iredell	20.80
Tarboro	Edgecombe	20.75
Wagram	Scotland	20.75
Wake Forest	Wake	20.75
Washington	Beaufort	20.75
Weldon	Halifax	20.75
Williamston	Marlin	20.75
Wilson	Oklahoma	20.75
Woodland	Northampton	20.75

OKLAHOMA

City	County	Basic mid- diling white inch loan rate
Altus	Jackson	20.25
Anadarko	Caddo	20.25
Chickasha	Grady	20.25
Durant	Bryan	20.25
Elk City	Beckham	20.25
Frederick	Tillman	20.25
Hobart	Kiowa	20.25
Idabel	McCurtain	20.25
Mangum	Greer	20.25
Mountain View	Kiowa	20.25
Muskogee	Muskogee	20.25
Oklahoma City	Oklahoma	20.25
Wynne Wood	Garvin	20.25

SOUTH CAROLINA

City	County	Basic mid- diling white inch loan rate
Abbeville	Abbeville	20.80
Aiken	Aiken	20.80
Allendale	Allendale	20.80
Anderson	Anderson	20.80
Angola	Chesterfield	20.80
Bamberg	Bamberg	20.75
Barnwell	Barnwell	20.75

RULES AND REGULATIONS

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SOUTH CAROLINA—Continued

City	County	Basis mid- ding white inch loan rate
Batesburg	Lexington	20.80
Bennettsville	Marlboro	20.75
Bethune	Kershaw	20.80
Bishopville	Lee	20.75
Blackville	Barnwell	20.75
Bowman	Orangeburg	20.75
Branchville	do	20.75
Brunson	Hampton	20.75
Calhoun Falls	Abbeville	20.80
Cameron	Kershaw	20.75
Cameron	Calhoun	20.75
Charleston	Charleston	20.75
Cheraw	Chesterfield	20.80
Chester	Chester	20.80
Chesterfield	Chesterfield	20.80
Climon	Laurens	20.80
Clio	Marlboro	20.75
Clover	York	20.80
Columbia	Richland	20.80
Cowpens	Spartanburg	20.80
Dalzell	Sumter	20.75
Darlington	Darlington	20.75
Denmark	Bamberg	20.75
Dillon	Dillon	20.75
Edgefield	Edgefield	20.80
Elgin	Kershaw	20.80
Elmore	Orangeburg	20.75
Estill	Hampton	20.75
Florence	Florence	20.75
Fountain Inn	Greenville	20.80
Gaffney	Cherokee	20.80
Garnett	Hampton	20.75
Greenville	Williamsburg	20.75
Greenville	Greenville	20.80
Greenwood	Greenwood	20.80
Hartsville	Darlington	20.75
Heath Springs	Lancaster	20.80
Hemlockway	Williamsburg	20.75
Holly Hill	Orangeburg	20.75
Inman	Spartanburg	20.80
Jefferson	Chesterfield	20.80
Johnsonville	Florence	20.75
Johnston	Edgefield	20.80
Kershaw	Kershaw	20.80
Kingstree	Williamsburg	20.75
Lake City	Florence	20.75
Lake View	Dillon	20.75
Lamar	Darlington	20.75
Latta	Dillon	20.75
Laurens	Laurens	20.80
Leesville	Lexington	20.80
Lynchburg	Lee	20.75
McClell	Marlboro	20.75
Manning	Clarendon	20.75
Marion	Marion	20.75
Mayesville	Sumter	20.75
Mountville	Laurens	20.80
Mullins	Marion	20.75
Newberry	Newberry	20.80
North	Orangeburg	20.75
Norway	do	20.75
Olanta	Florence	20.75
Olaz	Bamberg	20.75
Orangeburg	Orangeburg	20.75
Pamlico	Florence	20.75
Patrick	Chesterfield	20.80
Pendleton	Anderson	20.80
Pinewood	Sumter	20.75
Pump Branch	McCormick	20.80
Prosperity	Newberry	20.80
Rider Spring	Saluda	20.80
Ridgeway	Fairfield	20.80
Rock Hill	York	20.80
Saluda	Saluda	20.80
Seneca	Oconee	20.80
Spartanburg	Spartanburg	20.80
Springfield	Orangeburg	20.75
St. Matthews	Calhoun	20.75
Summerton	Charleston	20.75
Sumter	Sumter	20.75

SOUTH CAROLINA—Continued

City	County	Basis mid- ding white inch loan rate
Swansea	Lexington	20.80
Timmonsville	Florence	20.75
Turkeyville	Clarendon	20.75
Union	Union	20.80
Waguer	Aiken	20.80
Wellford	Spartanburg	20.80
Williston	Barnwell	20.75
York	York	20.80

TENNESSEE

City	County	Basis mid- ding white inch loan rate
Brownsville	Haywood	20.40
Chattanooga	Hamilton	20.55
Covington	Tipton	20.40
Decherd	Franklin	20.45
Dyersburg	Dyer	20.40
Five Points	Lawrence	20.40
Henderson	Chester	20.40
Jackson	Madison	20.40
Lawrenceburg	Lawrence	20.40
Memphis	Shelby	20.40
Milan	Gibson	20.40
Ripley	Lauderdale	20.40
Tiptonville	Lake	20.40

TEXAS

City	County	Basis mid- ding white inch loan rate
Abernathy	Hale	20.20
Abilene	Taylor	20.25
Ballinger	Runnels	20.25
Bay City	Matagorda	20.25
Big Spring	Howard	20.20
Bovina	Parmer	20.20
Brady	Mculloch	20.25
Brenham	Washington	20.25
Brownfield	Terry	20.20
Brownsville	Cameron	20.20
Brownwood	Brown	20.25
Bryan	Brazos	20.25
Burton	Washington	20.25
Cameron	Milam	20.25
Chalson Station	Jefferson	20.30
Childress	Childress	20.25
Clarksville	Red River	20.30
Cleburne	Johnson	20.25
Colorado City	Mitchell	20.25
Commerces	Hunt	20.30
Cooper	Delta	20.25
Corpus Christi	Nueces	20.25
Corsicana	Navarro	20.25
Crockett	Houston	20.25
Crosbyton	Crosby	20.20
Dallas	Dallas	20.25
Dinmitt	Castro	20.20
Edna	Jackson	20.25
Elgin	Bastrop	20.25
Enloe	Delta	20.30
Euola	Ellis	20.25
Fabens	El Paso	20.15
Fauna	Harris	20.30
Floydada	Floyd	20.25
Forney	Kaufman	20.30
Fort Stockton	Pecos	20.20
Gainesville	Cooke	20.30
Galveston	Galveston	20.30
Garland	Dallas	20.30
Greenville	Hunt	20.30
Hamlin	Jones	20.25
Hartlingen	Cameron	20.20
Hart	Castro	20.20
Haskell	Haskell	20.25
Hearne	Robertson	20.25
Hedley	Donley	20.25
Hillsboro	Hill	20.25
Honey Grove	Fannin	20.30
Houston	Harris	20.30
Hubbard	Hill	20.25
Huntsville	Walker	20.25

TEXAS—Continued

City	County	Basis mid- ding white inch loan rate
Kaufman	Kaufman	20.30
Kenedy	Karnes	20.25
Knot City	Knox	20.25
La Grange	Payette	20.25
Lamesa	Dawson	20.25
Levelland	Hockley	20.20
Littlefield	Lamb	20.30
Lockhart	Caldwell	20.25
Lockney	Floyd	20.20
Loraine	Mitchell	20.25
Lorenzo	Crosby	20.20
Lubbock	Lubbock	20.20
McKinney	Collin	20.30
Martin	Falls	20.25
Mart	McLennan	20.25
Memphis	Hall	20.25
Mexia	Limestone	20.25
Morton	Cochran	20.20
Muleshoe	Bailey	20.20
Munday	Knox	20.25
Nacogdoches	Nacogdoches	20.30
Navasota	Grimes	20.25
Needville	Fort Bend	20.30
O'Brien	Haskell	20.25
Odonnell	Lynn	20.20
Paducah	Cottle	20.25
Paris	Lamar	20.30
Pecos	Reeves	20.20
Phelan	Yakum	20.20
Plainview	Hale	20.20
Pyote	Ward	20.20
Quanah	Hardeman	20.25
Quitaque	Briscoe	20.20
Rails	Crosby	20.25
Raymondville	Willacy	20.20
Roaring Springs	Motley	20.25
Rochester	Haskell	20.25
Rosebud	Falls	20.25
Rosenberg	Fort Bend	20.30
Rotan	Fisher	20.25
Rule	Haskell	20.25
San Angelo	Tom Green	20.25
Schulenburg	Payette	20.25
Seagraves	Guinn	20.20
Seymour	Bayler	20.25
Shamrock	Wheeler	20.25
Shiner	Lavaca	20.25
Stanton	Lubbock	20.20
Snyder	Scurry	20.25
Spur	Dickens	20.25
Stanford	Jones	20.25
Stanton	Martin	20.20
Sudan	Lamb	20.20
Sweetwater	Nolan	20.25
Taft	San Patricio	20.25
Tahoka	Lynn	20.20
Tarzan	Martin	20.20
Taylor	Williamson	20.25
Temple	Bell	20.25
Terrell	Kaufman	20.30
Texarkana	Bowie	20.30
Tulia	Swisher	20.20
Turkey	Hall	20.20
Vernon	Wilbarger	20.25
Victoria	Victoria	20.25
Waco	McLennan	20.25
Waxahachie	Ellis	20.25
Wellington	Collingsworth	20.25
Weslaco	Hidalgo	20.20
Whiteface	Cochran	20.20
Wichita Falls	Wichita	20.25
Wills Point	Van Zandt	20.30
Winters	Runnels	20.25

VIRGINIA

City	County	Basis mid- ding white inch loan rate
Boykins	Southampton	20.75
Broadnax	Brunswick	20.75

RULES AND REGULATIONS

§ 1427.1523 Schedule of premiums and discounts for grade and staple length of eligible 1969 crop upland cotton.

(Points per pound—Basis 1-inch middling)

Grade	Codes ¹	Staple length (inches)													
		1 ³ / ₁₆	1 ¹ / ₄	1 ¹ / ₂	1 ³ / ₄	1 ⁵ / ₈	1	1 ¹ / ₂	1 ³ / ₄	1 ¹ / ₂	1 ³ / ₄	1 ¹ / ₂	1 ³ / ₄	1 ¹ / ₂	1 ³ / ₄ and longer
		(26)	(28)	(29)	(30)	(31)	(32)	(33)	(34)	(35)	(36)	(37)	(38)	(39)	(40 and up)
WHITE															
GM and better	(11 and 01)	Pts. -345	Pts. -319	Pts. -285	Pts. -195	Pts. -95	Pts. +50	Pts. +215	Pts. +415	Pts. +490	Pts. +560	Pts. +620	Pts. +710	Pts. +800	Pts. +1040
SM	(21)	-355	-320	-275	-205	-105	+40	+210	+405	+480	+550	+605	+695	+875	+1025
MID plus	(30)	-375	-340	-295	-225	-125	+20	+180	+380	+455	+520	+570	+650	+830	+985
MID	(31)	-395	-360	-315	-245	-145	Base	+100	+360	+430	+490	+540	+610	+775	+900
SLM plus	(40)	-480	-450	-405	-335	-235	-125	+30	+220	+275	+310	+345	+425	+560	+685
SLM	(41)	-530	-495	-450	-380	-315	-185	-40	+140	+195	+230	+280	+345	+480	+595
LM plus	(50)	-505	-570	-530	-470	-400	-285	-185	-75	-40	-5	+5	+30	+55	+105
LM	(51)	-635	-610	-575	-515	-445	-335	-250	-145	-105	-75	-65	-50	-25	Even
SGO plus	(60)	-735	-715	-680	-630	-570	-460	-410	-380	-365	-355	-355	-355	-355	-355
SGO	(61)	-785	-765	-730	-680	-620	-515	-475	-450	-435	-425	-425	-425	-425	-425
GO plus	(70)	-865	-845	-815	-775	-720	-625	-585	-575	-560	-550	-550	-550	-550	-550
GO	(71)	-910	-890	-860	-820	-770	-680	-640	-630	-620	-610	-610	-610	-610	-610
LIGHT SPOTTED															
GM	(12)	-420	-385	-340	-285	-215	-95	+65	+195	+245	+280	+320	+395	+565	+725
SM	(22)	-430	-395	-350	-295	-225	-110	+55	+180	+230	+270	+305	+375	+545	+705
MID	(32)	-490	-460	-420	-365	-300	-185	-40	+95	+135	+180	+225	+290	+405	+565
SLM	(42)	-610	-580	-540	-485	-425	-325	-225	-140	-115	-85	-70	-55	-40	-15
LM	(52)	-750	-720	-685	-635	-585	-505	-445	-400	-390	-385	-385	-385	-385	-385
SPOTTED															
GM	(13)	-585	-555	-515	-460	-400	-300	-215	-170	-145	-115	-105	-95	-70	-45
SM	(23)	-600	-570	-530	-475	-415	-315	-230	-185	-160	-130	-120	-110	-90	-70
MID	(33)	-655	-625	-585	-530	-475	-390	-320	-285	-275	-265	-260	-255	-255	-255
SLM	(43)	-765	-730	-690	-640	-595	-520	-460	-435	-425	-425	-425	-425	-425	-425
LM	(53)	-880	-845	-810	-770	-725	-645	-600	-585	-580	-575	-575	-575	-575	-575
TINGED															
GM	(14)	-740	-700	-670	-640	-610	-575	-550	-540	-535	-535	-535	-535	-535	-535
SM	(24)	-755	-715	-685	-655	-625	-590	-565	-555	-550	-550	-550	-550	-550	-550
MID	(34)	-820	-780	-750	-720	-685	-655	-630	-620	-615	-615	-615	-615	-615	-615
SLM	(44)	-920	-880	-845	-810	-780	-740	-725	-710	-710	-710	-710	-710	-710	-710
LM	(54)	-1035	-1000	-970	-940	-915	-880	-855	-845	-845	-845	-845	-845	-845	-845
YELLOW STAINED															
GM	(15)	-900	-860	-835	-805	-780	-745	-730	-730	-730	-730	-730	-730	-730	-730
SM	(25)	-915	-875	-850	-820	-795	-760	-745	-735	-735	-735	-735	-735	-735	-735
MID	(35)	-970	-930	-905	-875	-845	-815	-800	-790	-790	-790	-790	-790	-790	-790
LIGHT GRAY															
GM	(16)	-435	-405	-365	-315	-230	-115	+10	+115	+170	+205	+250	+300	+450	+580
SM	(26)	-480	-450	-415	-365	-285	-180	-65	+40	+90	+150	+190	+235	+390	+485
MID	(36)	-585	-550	-525	-480	-410	-315	-235	-155	-130	-110	-95	-70	-45	-20
SLM	(46)	-730	-710	-680	-635	-575	-490	-430	-390	-375	-360	-350	-340	-330	-320
GRAY															
GM	(17)	-535	-510	-475	-430	-360	-265	-160	-100	-60	-10	+30	+75	+130	+165
SM	(27)	-595	-570	-535	-490	-420	-325	-245	-190	-170	-150	-130	-115	-110	-65
MID	(37)	-750	-730	-700	-655	-605	-510	-440	-410	-395	-385	-385	-385	-385	-385
SLM	(47)	-860	-845	-810	-765	-725	-660	-615	-595	-590	-580	-580	-580	-580	-580

Grade Symbols: GM—Good Middling; SM—Strict Middling; MID—Middling; SLM—Strict Low Middling; LM—Low Middling; SGO—Strict Good Ordinary; GO—Good Ordinary.

¹ Grade and staple codes. Staple below 1³/₁₆ is coded 24 and is not eligible for loan. Any grade code starting with an S is "below grade" and is not eligible for loan.

§ 1427.1524 Schedule of premiums and discounts for micronaire readings on 1969 crop upland cotton.

Micronaire reading	Points per pound
5.3 and above	Discount of 135.
5.0 through 5.2	Discount of 35.
3.5 through 4.9	Premium of 45.
3.3 through 3.4	Premium of 45.
3.0 through 3.2	Discount of 140.
2.7 through 2.9	Discount of 255.
2.6 and less	Discount of 390.

§ 1427.1525 Schedule of loan rates for eligible qualities of 1969 crop extra long staple cotton by warehouse location.

(In cents per pound, net weight)

Grade	Staple length (inches)					
	1 3/4		1 1/4		1 1/2 and longer	
	Cotton stored in approved warehouses in—		Cotton stored in approved warehouses in—		Cotton stored in approved warehouses in—	
	Arizona and California	New Mexico, Texas and other States	Arizona and California	New Mexico, Texas and other States	Arizona and California	New Mexico, Texas and other States
1	41.00	41.40	41.50	41.90	41.70	42.10
2	40.75	41.15	41.30	41.70	41.50	41.90
3	40.35	40.75	40.90	41.30	41.10	41.50
4	39.60	40.00	40.05	40.45	40.25	40.65
5	37.25	37.65	37.70	38.10	37.85	38.25
6	33.80	34.20	34.10	34.50	34.20	34.60
7	30.70	31.10	30.90	31.30	31.00	31.40
8	28.10	28.50	28.25	28.65	28.35	28.75
9	25.85	26.25	26.00	26.40	26.10	26.50

Effective date. This subpart shall become effective upon filing with the FEDERAL REGISTER for publication.

Signed at Washington, D.C., on July 7, 1969.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 69-8198; Filed, July 14, 1969; 8:45 a.m.]

[CCC Honey Price Support Regs., for 1968 and Subsequent Crops, Rev. 1, Amdt. 1]

PART 1434—HONEY

Subpart—Honey Price Support Regulations

FEES AND CHARGES; CORRECTION

In F.R. Doc. 69-7300 appearing at page 9675 in the issue of Friday, June 20, 1969, the amount of the loan service fee for cooperatives as set forth in § 1434.13(a) is corrected by changing "\$2" to read "\$4".

This correction is effective as of June 1, 1969, the effective date of the amendment being corrected.

Signed at Washington, D.C., on July 9, 1969.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 69-8292; Filed, July 14, 1969; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 69-WE-5]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Control Zone

On April 15, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 6487) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a control zone for San Carlos Airport, Calif.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed

amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., September 18, 1969.

Issued in Los Angeles, Calif., on June 26, 1969.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.171 (34 F.R. 4557) the following control zone is added:

SAN CARLOS, CALIF.

Within a 3-mile radius of the San Carlos Airport (latitude 37°30'40" N., longitude 122°14'50" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airman's Information Manual.

[F.R. Doc. 69-8280; Filed, July 14, 1969; 8:46 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER E—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

PART 121—FOOD ADDITIVES

Malathion

A. A petition (PP 8F0634) was filed with the Food and Drug Administration by the American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, N.J. 08540, proposing the establishment of tolerances for residues of the insecticide malathion in or on raw agricultural commodities as follows: 135 parts per million in or on cowpea hay, lespedeza, lupines, peanuts (forage and hay), soybeans (forage and hay), and vetch; 50 parts per million in or on almonds (hulls); 8 parts per million in or on chestnuts, filberts, lentils, okra, papayas, soybeans (dry and succulent), sugar beets, and sweetpotatoes; 1 part per million (negligible residues) in or on almonds (meat) and macadamia nuts; 0.5 part per million (negligible residues) in or on peanuts; 0.2 part per million (negligible residues) in milk; and 0.1 part per million (negligible residues) in eggs and safflower seed.

Subsequently the petitioner amended the petition to request the tolerances as they appear in the amended section below.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that:

1. The subject residues on feed items are in the category specified in § 120.6 (a) (3); whereas, dermal applications to cattle and poultry require establishment of tolerances for residues in milk and eggs.

2. The tolerances established by this order will protect the public health. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 348a(d)(2)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 120 is amended by revising § 120.111 to read as follows:

§ 120.111 Malathion; tolerances for residues.

Tolerances are established for residues of the insecticide malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on raw agricultural commodities as follows:

From preharvest application: 135 parts per million in or on alfalfa, clover, cowpea forage and hay, grass, grass hay, lespedeza hay and straw, lupine hay and straw, peanut forage and hay, soybean forage and hay, and vetch hay and straw.

From preharvest application: 50 parts per million in or on almond hulls.

From preharvest application: 8 parts per million in or on apples, apricots, asparagus, avocados, beans, beets (including tops), blackberries, blueberries, boysenberries, broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, cherries, collards, corn forage, cranberries, cucumbers, currants, dandelions, dates, dewberries, eggplants, endive (escarole), figs, garlic, gooseberries, grapefruit, grapes, guavas, horseradish, kale, kohlrabi, kumquats, leeks, lemons, lentils, lespedeza seed, lettuce, limes, loganberries, lupine seed, mangos, melons, mushrooms, mustard greens, nectarines, okra, onions (including green onions), oranges, parsley, parsnips, passion fruit, peaches, pears, peas, peavines, peavine hay, pecans, peppermint, peppers, pineapples, plums, potatoes, prunes, pumpkins, quinces, radishes, raspberries, rutabagas, salsify (including tops), shallots, sorghum forage, soybeans (dry and succulent), spearmint, spinach, squash (both summer and winter), strawberries, sugar beets (tops), Swiss chard, tangelos, tangerines, tomatoes, turnips (including tops), vetch seed, walnuts, and watercress.

From preharvest and postharvest application: 8 parts per million in or on peanuts and the grains of barley, oats, rice, rye, sorghum, and wheat.

From postharvest application: 8 parts per million in or on corn grain.

From preslaughter application: 4 parts per million in or on meat, fat, and meat byproducts from cattle, goats, hogs, horses, poultry, or sheep; the tolerance level shall not be exceeded in any cut of meat or in any meat byproduct from

cattle, goats, hogs, horses, poultry, or sheep.

From preharvest application: 2 parts per million in or on corn (kernels plus cob with husk removed) and cottonseed.

From preharvest application: 1 part per million in or on almonds, chestnuts, filberts, macadamia nuts, papayas, sugar beets (roots), and sweetpotatoes.

From preharvest application: 0.2 part per million in or on safflower seed.

From application to dairy cows: 0.5 part per million in milk fat reflecting negligible residues in milk.

From application to poultry: 0.1 part per million in eggs.

Where tolerances are established in this section for residues of malathion from both preharvest and postharvest application to the same commodity, the accumulative residues on the commodity from both shall not exceed the tolerance for residues from postharvest application.

B. Having evaluated the data in a petition (FAP 9H2348) submitted by the aforementioned petitioner, and other relevant material, the Commissioner concludes that the food additive regulations should be amended to establish a food additive tolerance of 0.6 part per million for residues of the subject insecticide in refined safflower oil resulting from application of the insecticide to the growing safflower plant and that such food additive tolerance is safe.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under authority delegated as cited above, Part 121 is amended by revising § 121.1172 to read as follows:

§ 121.1172 Malathion.

Malathion may be safely used in accordance with the following conditions:

(a) (1) It is incorporated into paper trays in amounts not exceeding 200 milligrams per square foot.

(2) Treated paper trays are intended for use only in the drying of grapes (raisins).

(3) Total residue of malathion on processed ready-to-eat raisins from drying on treated trays and from application to grapes before harvest shall not exceed 8 parts per million.

(b) Residues of malathion in refined safflower oil from application to the growing safflower plant shall not exceed 0.6 part per million.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for

the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Secs. 408(d)(2), 409(c)(1), 68 Stat. 512; 72 Stat. 1786; 21 U.S.C. 348a(d)(2), 348(c)(1))

Dated: July 8, 1969.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 69-8274; Filed, July 14, 1969;
8:46 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

O,O-Dimethyl 2,2,2-Trichloro-1-Hydroxyethyl Phosphonate

A petition (PP 7F0612) was filed with the Food and Drug Administration by the Chemagro Corp., Post Office Box 4913, Kansas City, Mo. 64120, proposing the establishment of tolerances for residues of the insecticide O,O-dimethyl 2,2,2-trichloro-1-hydroxyethyl phosphonate in or on certain raw agricultural commodities.

Subsequently, the petitioner amended the petition by withdrawing the proposed tolerances regarding kale, rutabagas, and turnips and proposing the following tolerances: 45 parts per million in or on alfalfa (hay) and clover (hay); 12 parts per million in or on alfalfa (fresh), barley (green fodder and straw), clover (fresh), flax straw, oats (green fodder and straw), sugar beet tops, and wheat (green fodder and straw); 2 parts per million in or on bananas (of which not more than 0.2 part per million will be in the pulp after peel is removed and discarded); 1 part per million in or on beans (vines) and cowpeas (vines); and 0.1 part per million (negligible residues) in or on artichokes, brussels sprouts, barley (grain), beans (dried), cabbage, carrots, cauliflower, collards, corn (forage and fodder), corn (kernels and cobs with husks removed), cottonseed, cowpeas, flaxseed, lettuce, lima beans, oats (grain), peppers, pumpkins, safflower seed, snap beans, sugar beets, table beets, tomatoes, and wheat (grain).

The petitioner also proposes the following tolerances from topical applications of the insecticide to meat and dairy cattle: 0.1 part per million in or on meat, fat, and meat byproducts of cattle; and 0.01 part per million in milk.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data in the petition and other relevant material, the Commissioner of Food and Drugs concludes that:

1. Since the proposed usages on growing crops are not reasonably expected to result in transfer of residues of the pesticide to meat, milk, eggs, or poultry, tolerances are unnecessary regarding these commodities. These usages are classified in the category specified in § 120.6(a)(3). For topical application of the insecticide, however, there is reasonable expectation of residues in meat and milk and these usages are classified as specified in § 120.6(a)(2).

2. The tolerances established by this order will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and under authority delegated to the Commissioner (21 CFR 2.120), § 120.198 is revised to read as follows:

§ 120.198 O,O-Dimethyl 2,2,2-trichloro-1-hydroxyethyl phosphonate; tolerances for residues.

Tolerances are established for residues of the insecticide O,O-dimethyl 2,2,2-trichloro-1-hydroxyethyl phosphonate in or on raw agricultural commodities as follows:

45 parts per million in or on alfalfa (hay) and clover (hay).

12 parts per million in or on alfalfa (fresh), barley (green fodder and straw), clover (fresh), flax straw, oats (green fodder and straw), sugar beet tops, and wheat (green fodder and straw).

2 parts per million in or on bananas (of which not more than 0.2 part per million will be present in the pulp after the peel is removed).

1 part per million in or on bean vines and cowpea vines.

0.1 part per million (negligible residues) in or on artichokes, barley (grain), beans (dried), beets (garden), brussels sprouts, cabbage, carrots, cauliflower, collards, corn fodder and forage, corn (kernels plus cob with husk removed), cottonseed, cowpeas, flaxseed, lettuce, lima beans, meat, fat, and meat byproducts of cattle, oats (grain), peppers, pumpkins, safflower seed, snap beans, sugar beets, tomatoes, and wheat (grain).

0.01 part per million (negligible residue) in milk.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: July 8, 1969.

R. E. DUGGAN,
*Acting Associate Commissioner
for Compliance.*

[F.R. Doc. 69-8275; Filed, July 14, 1969;
8:46 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Dimethyl 2,3,5,6-Tetrachloroterephthalate

A petition (PP 9F0780) was filed with the Food and Drug Administration by Diamond Shamrock Corp., Post Office Box 348, Painesville, Ohio 44077, proposing the establishment of tolerances for negligible residues of the herbicide dimethyl 2,3,5,6-tetrachloroterephthalate and its metabolites (monomethyl 2,3,5,6-tetrachloroterephthalate and 2,3,5,6-tetrachloroterephthalic acid) in or on the raw agricultural commodities corn grain (field) and sweet corn (husk removed) at 0.05 part per million; and corn forage (field and sweet) at 0.4 part per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data submitted in the petition and other relevant material, the Commissioner of Food and Drugs finds that:

1. The proposed usage is not reasonably expected to result in residues of the herbicide and/or its metabolites in meat, milk, poultry, and eggs. The uses are classified in the category specified in § 120.6(a)(3).

2. The tolerances established by this order are safe and will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and under authority delegated to the Commissioner (21 CFR 2.120), § 120.185 is revised to read as follows to establish the above-mentioned tolerances:

§ 120.185 Dimethyl 2,3,5,6-tetrachloroterephthalate; tolerances for residues.

Tolerances for total residues of the herbicide dimethyl 2,3,5,6-tetrachloroterephthalate and its metabolites monomethyl 2,3,5,6-tetrachloroterephthalate and 2,3,5,6-tetrachloroterephthalic acid (calculated as dimethyl 2,3,5,6-tetrachloroterephthalate) are established as follows:

5 parts per million in or on mustard greens and turnip greens.

2 parts per million in or on collards, field beans (dry), kale, lettuce, mung beans (dry), peppers, pimentos, potatoes, snap beans (succulent), southern peas (black-eyed peas), soybeans, strawberries, sweetpotatoes, turnips, and yams.

1 part per million in or on broccoli, brussels sprouts, cabbage, cantaloups, cauliflower, cucumbers, eggplants, garlic, honeydew melons, onions, summer squash, tomatoes, watermelons, and winter squash.

0.4 part per million (negligible residue) in or on corn forage or fodder (including sweet corn, field corn, and popcorn).

0.2 part per million (negligible residue) in or on cottonseed.

0.05 part per million (negligible residue) in or on corn grain (including field corn and popcorn) and sweet corn (kernels plus cob with husk removed).

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: July 8, 1969.

R. E. DUGGAN,
*Acting Associate Commissioner
for Compliance.*

[F.R. Doc. 69-8273; Filed, July 14, 1969;
8:45 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Amiben

A petition (PP 7F0591) was filed with the Food and Drug Administration by Amchem Products, Inc., Brookside Avenue, Ambler, Pa. 19002, proposing the establishment of tolerances for negligible residues of the herbicide amiben (3-amino-2,5-dichlorobenzoic acid) and its related aminodichlorobenzoic acids in or on the raw agricultural commodities beans (dry), beans (lima), corn, peanuts, peppers, pumpkins, soybeans, squash,

sweetpotatoes, and tomatoes at 0.2 part per million.

Subsequently, the petitioner amended the petition by proposing additional tolerances for residues of amiben in or on corn fodder and forage, bean vines, peanut forage, and soybean forage; by rewording the request regarding squash to read "squash (summer and winter)"; and by reducing the tolerance levels on all the subject crops to 0.1 part per million.

Data in the petition show that tolerances for residues of the related aminodichlorobenzoic acids resulting from the proposed uses are unnecessary.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data submitted in the petition and other relevant material, the Commissioner of Food and Drugs concludes that:

1. Since the proposed usage is not reasonably expected to result in residues of the pesticide in eggs, meat, milk, or poultry, tolerances are unnecessary regarding these items. The usage is classified in the category specified in § 120.6(a)(3).

2. The tolerances established by this order will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and under authority delegated to the Commissioner (21 CFR

2.120), Part 120 is amended by adding to Subpart C the following new section:

§ 120.266 Amiben; tolerances for residues.

Tolerances for negligible residues of amiben (3-amino-2,5-dichlorobenzoic acid) are established in or on the raw agricultural commodities beans (dried), bean vines, field corn (grain, fodder, and forage), lima beans, peanuts, peanut forage, peppers, pumpkins, soybeans, soybean forage, squash (summer and winter), sweetpotatoes, and tomatoes at 0.1 part per million.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: July 8, 1969.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 69-8272; Filed, July 14, 1969;
8:45 a.m.]

SUBCHAPTER C—DRUGS

**PART 147—ANTIBIOTICS INTENDED
FOR USE IN THE LABORATORY DI-
AGNOSIS OF DISEASE**

Packaging

In § 147.2 *Antibiotic sensitivity discs; certification procedure*, paragraph (b) *Packaging*, third sentence, the incorrect cross-reference "§ 146.7" is changed to read "§ 146.10".

(Secs. 507, 701(a), 52 Stat. 1055, 59 Stat. 463,
as amended; 21 U.S.C. 357, 371(a))

Dated: July 8, 1969.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 69-8271; Filed, July 14, 1969;
8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 32]

WICHITA MOUNTAINS WILDLIFE REFUGE, OKLA.

Hunting

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa), it is proposed to amend 50 CFR 32.31 by the addition of the Wichita Mountains Wildlife Refuge, Okla., to the list of areas open to the hunting of elk as legislatively permitted.

It has been determined that the regulated hunting of elk may be permitted as designated on the Wichita Mountains Wildlife Refuge without detriment to the objectives for which the area was established.

It has also been determined that the carrying capacity of the refuge can support a healthy herd of 350 elk. The present herd numbers 535. To reduce the herd to its habitat capacity, a surplus of 185 elk will be removed. About 60 of these, the estimated annual herd increment, is expected to be taken by hunters, and the remainder will be trapped and transplanted to other suitable habitat.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to this proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, within 60 days of the date of publication of this notice in the **FEDERAL REGISTER**.

Section 32.31 is amended by the following addition:

§ 32.31 List of open areas; big game.

OKLAHOMA

Wichita Mountains Wildlife Refuge.

JOHN S. GOTTSCHALK,
Director, Bureau of
Sport Fisheries and Wildlife.

July 11, 1969.

[P.R. Doc. 69-8372; Filed, July 14, 1969;
8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Part 71]

GENERAL PROVISIONS RELATING TO INTERSTATE MOVEMENT OF AN- IMALS, INCLUDING POULTRY

Notice of Proposed Rule Making

Notice is hereby given, in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Department of Agriculture is considering the amendment of the general regulations relating to the interstate movement of certain animals, including poultry (9 CFR Part 71), pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114a, 114a-1, 115-117, 120-126, 134-134h), in the following respects:

1. Section 71.2 would be amended to read as follows:

§ 71.2 Secretary to issue rule governing quarantine and interstate movement of diseased animals, including poultry.

When the Secretary of Agriculture shall determine the fact that poultry or other animals in any State, Territory, or the District of Columbia are affected with any contagious, infectious, or communicable disease of livestock or poultry for which, in his opinion, a quarantine should be established or that other basis for a quarantine exists, notice will be given of that fact, and a rule will be issued accordingly, placing in quarantine such State, Territory, or the District of Columbia, or specified portion thereof. This rule will either absolutely forbid the interstate movement of the quarantined animals from the quarantined area or will indicate the regulations under which interstate movements may be made.

2. Sections 71.4, 71.5, 71.6, 71.7, 71.8, and 71.9 of the regulations would be deleted and new §§ 71.4, 71.5, 71.6 and 71.7 would be issued to read as follows:

§ 71.4 Maintenance of certain facilities and premises in a sanitary condition required; cleaning and disinfection, when required; animals classed as "exposed."

(a) Yards, pens, chutes, alleys, and other facilities and premises which are used in connection with the interstate movement of livestock or poultry shall be maintained by the person in possession of the facilities and premises in a clean and sanitary condition, in accordance with good animal husbandry practices, and shall be subject to inspection by a Division or State Inspector or an

accredited veterinarian and when such inspector or veterinarian determines that such facilities or premises are not in such a clean and sanitary condition and gives written notice of his determination to such person, the facilities and premises shall be cleaned and disinfected in accordance with §§ 71.7 and 71.10-71.12 by such person under the supervision of such an inspector or veterinarian before such premises are again used for livestock or poultry.

(b) Yards, pens, chutes, alleys, and other facilities and premises which have contained interstate shipments of cattle, sheep, swine, poultry, or other animals affected with, or carrying the infection of, any contagious, infectious, or communicable disease of livestock or poultry other than slight unopened cases of actinomycosis or actinobacillosis (or both, bovine foot rot, atrophic rhinitis, ram epididymitis, ringworm, infectious keratitis, and arthritis (simple lesions only), shall be cleaned and disinfected under the supervision of a Division or State Inspector or accredited veterinarian in accordance with §§ 71.7 and 71.10-71.12 before such premises are again used for animals, and any poultry or other animals unloaded into such yards or premises before they have been so cleaned and disinfected shall thereafter be classed as "exposed" within the meaning of the regulations in this subchapter and shall not be moved interstate except in compliance with the provisions of such regulations applicable to exposed animals.

§ 71.5 Unsanitary railroad cars, trucks, boats, aircraft or other means of conveyance; interstate movement restricted.

No person who receives notice from a Division Inspector that a railroad car, truck, boat, aircraft or other means of conveyance owned or operated by such person is not in a clean and sanitary condition in accordance with good animal husbandry practices, shall thereafter use such means of conveyance in connection with the interstate movement of livestock or poultry, or move said means of conveyance interstate, until it has been cleaned and disinfected under the supervision of a Division or State Inspector or accredited veterinarian in accordance with §§ 71.7 and 71.10-71.12.

§ 71.6 Carrier responsible for cleaning and disinfecting of railroad cars, trucks, boats, aircraft or other means of conveyance.

(a) Railroad cars, trucks, boats, aircraft and other means of conveyance which have been used in the interstate transportation of cattle, sheep, swine, poultry, or other animals affected with,

or carrying the infection of, any contagious, infectious, or communicable disease of livestock or poultry other than slight unopened cases of actinomycosis or actinobacillosis (or both) atrophic rhinitis, bovine foot rot, ram epididymitis, ringworm, infectious keratitis, and arthritis (simple lesions only), shall be cleaned and disinfected under Division supervision in accordance with §§ 71.7 and 71.10-71.12, at the point where the animals are unloaded, before again being used for animals, including poultry, and the final carrier shall be responsible for such cleaning and disinfecting: *Provided*, That when Division supervision is not available at such point, the means of conveyance may be cleaned and disinfected under the supervision of a State Inspector or an accredited veterinarian.

(b) No railroad car, truck, boat, aircraft or other means of conveyance from which poultry or other animals affected with an infectious, contagious or communicable disease of livestock or poultry, other than those specified in § 71.4 (b), have been unloaded shall thereafter be used in connection with the interstate movement of animals, including poultry, or be moved interstate until it has been cleaned and disinfected by the final carrier under the supervision of a Division or State Inspector or accredited veterinarian in accordance with §§ 71.7 and 71.10-71.12.

(c) If Division supervision or other supervision as required by paragraph (a) or (b) of this section or proper cleaning and disinfecting facilities are not available at the point where the animals are unloaded, upon permission first received from the Division, the means of conveyance may be forwarded empty to a point at which such supervision and facilities are available, and there be cleaned and disinfected under supervision in accordance with §§ 71.7 and 71.10-71.12.

§ 71.7 Means of conveyance, facilities and premises; methods of cleaning and disinfecting.

(a) Railroad cars, trucks, aircraft or other means of conveyance, except boats, required by the regulations in this subchapter to be cleaned and disinfected shall be treated in the following manner: Remove all litter and manure from all portions of the conveyance, including any external ledges and framework; clean the exterior and interior of the conveyance; and saturate the entire interior surface, including the inner surface of the doors of the conveyance, with a permitted disinfectant specified in §§ 71.10-71.12.

(b) Boats required by the regulations in this subchapter to be cleaned and disinfected shall be treated in the following manner: Remove all litter and manure from the decks and stalls, and all other parts of the boat occupied or traversed by any poultry or other animals and from the portable chutes or other appliances or fixtures used in loading and unloading the animals, and saturate with a permitted disinfectant the entire surface of the deck, stalls, or other parts of the boat occupied or traversed by any animals or with which they may come in contact or which have contained litter or manure.

(c) Yards, pens, chutes, and alleys required by the regulations in this subchapter to be disinfected shall be treated in the following manner: Empty all troughs, racks, or other feeding or watering appliances; remove all litter and manure from the floors, posts, or other parts; and saturate the entire surface of the fencing, troughs, chutes, floors, walls, and other parts with a permitted disinfectant specified in §§ 71.10-71.12.

§§ 71.13-71.17 [Amended]

3. Whenever in the heading or text of §§ 71.13 and 71.15 the term "livestock" is used, the words "or poultry"

would be inserted immediately thereafter, and whenever the term "livestock" is used in the text of § 71.14, the words "animals, including poultry" would be substituted.

4. Whenever in the heading or text of §§ 71.13, 71.14, 71.16, and 71.17 the term "animals" or "animal" is used, the words "poultry or other" would be inserted immediately preceding such term.

The purposes of the proposed amendments are to clarify and update the regulations contained in this part by (1) adding "aircraft and other means of conveyance" to the list of vehicles which are subject to cleaning and disinfection requirements under the regulations; (2) requiring that facilities and premises used in connection with the interstate movement of livestock and poultry be kept in a clean and sanitary condition; (3) including a reference to poultry as appropriate through the regulations in this part; and (4) clarifying the provisions of the regulations.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Director, Animal Health Division, Agricultural Research Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Md. 20782, within 30 days after publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 10th day of July 1969.

R. J. ANDERSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 69-8316; Filed, July 14, 1969;
8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ALBERT M. ROMBERGER

Notice of Granting of Relief

Notice is hereby given that Albert M. Romberger, 58 Silliman Street, Cressona, Pa. 17929, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on October 28, 1946, by the U.S. District Court for the Eastern District of Pennsylvania of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Albert M. Romberger, because of such conviction, to ship, transport or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Mr. Romberger to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Albert M. Romberger's application and have found:

(1) The conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Albert M. Romberger be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 9th day of July 1969.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[P.R. Doc. 69-8309; Filed, July 14, 1969; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Geological Survey

[Order No. 17]

WYOMING

Phosphate Land Classification

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SIXTH PRINCIPAL MERIDIAN, WYOMING

PHOSPHATE LANDS

- T. 41 N., R. 118 W., unsurveyed,
Sec. 3, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 4, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 5, E $\frac{1}{2}$ E $\frac{1}{2}$;
Sec. 8, E $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 14, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 15, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 16, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 17, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 18, S $\frac{1}{2}$;
Sec. 20, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 23, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 26, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 27, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 28, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 35, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 36, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

RECLASSIFIED PHOSPHATE LANDS FROM NONPHOSPHATE LANDS

Prior classification of the following described land as nonphosphate land is hereby revoked and the land is reclassified as phosphate land:

- T. 41 N., R. 118 W., unsurveyed,
Sec. 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 11, E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 24, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

NONPHOSPHATE LANDS

- T. 41 N., R. 118 W., unsurveyed,
Sec. 3, W $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 5, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$;
Secs. 8 and 7;
Sec. 8, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$;
Sec. 9, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 10, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 14, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 15, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 16, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$;
Sec. 17, N $\frac{1}{2}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 18, N $\frac{1}{2}$;
Sec. 19;

- Sec. 20, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$;
Sec. 23, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 25;
Sec. 26, N $\frac{1}{2}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 28, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;
Secs. 29 to 34, inclusive;
Sec. 35, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;
Sec. 36, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

The area described aggregates 15,411 acres, more or less, of which about 4,098 acres are classified phosphate lands, about 640 acres are reclassified phosphate lands that were formerly classified nonphosphate lands, and about 10,673 acres are classified nonphosphate lands.

ARTHUR A. BAKER,
Acting Director.

JULY 3, 1969.

[P.R. Doc. 69-8277; Filed, July 14, 1969; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

SHELL CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 9F0843) has been filed by Shell Chemical Co., Division of Shell Oil Co., Suite 1103, 1700 K Street NW., Washington, D.C. 20006, proposing the establishment of tolerances (21 CFR Part 120) for negligible residues of an insecticide that is a mixture of 3,4,5-trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate in or on the raw agricultural commodities corn grain, fodder, and forage, including field corn, popcorn, and sweet corn at 0.2 part per million.

The analytical method proposed in the petition for determining residues of the insecticide is a gas chromatographic procedure using an electron-capture detection system to measure the derivative produced by reaction with trifluoroacetic anhydride.

Dated: July 8, 1969.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[P.R. Doc. 69-8276; Filed, July 14, 1969; 8:46 a.m.]

Office of Education CONSTRUCTION OF NONCOMMERCIAL EDUCATIONAL BROADCAST FACILITIES

Notice of Acceptance of Applications for Filing

Notice is hereby given that the following described applications for Federal financial assistance in the construction of noncommercial educational broadcasting facilities are accepted for filing under the provisions of title III, part IV of the Communications Act of 1934, as amended (47 U.S.C. 390-399) and in accordance with 45 CFR 60.8.

Any interested person may, pursuant to 45 CFR 60.10, within 30 calendar days from the date of this publication, file comments regarding these applications with the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, Washington, D.C. 20202.

EDUCATIONAL TELEVISION

Department of Education of the Commonwealth of Puerto Rico (WIPR-TV) Urb. Industrial Tres Monjitas, Cesar Gonzalez Avenue, Calaf Corner, Hato Rey, P.R. 00919, File No. 9/339/0059-T, to improve the facilities of noncommercial educational television station WIPR-TV on Channel 6, San Juan, P.R., accepted as of April 30, 1969. Estimated project cost: \$300,000. Grant requested: \$225,000. Application signed by: Ramon Mellado, Secretary of Education.

EDUCATIONAL RADIO

Department of Education of the Commonwealth of Puerto Rico, Urb. Industrial Tres Monjitas, Cesar Gonzalez Avenue, Calaf Corner, Hato Rey, P.R. 00919, File No. 9/339/0058-R, to expand the facilities of noncommercial educational radio station WIPR-FM, Channel 217, San Juan, P.R., accepted as of April 30, 1969. Estimated project cost: \$100,000. Grant requested: \$75,000. Application signed by: Ramon Mellado, Secretary of Education.

The University of Vermont and State Agricultural College, 489 Main Street, Burlington, Vt. 05401, File No. 9/339/0005-R, to expand the facilities of noncommercial educational radio station WRUV-FM on Channel 211, Burlington, Vt., accepted as of April 11, 1969. Estimated project cost: \$35,959. Grant requested: \$25,629. Application signed by: Lyman S. Rowell, president.

Approved: July 1, 1969.

JAMES E. ALLEN, Jr.,
U.S. Commissioner of Education.

[F.R. Doc. 69-8296; Filed, July 14, 1969; 8:47 a.m.]

EDUCATION BENEFITS AND VETERANS' AND WAR ORPHANS' ASSISTANCE

Simultaneous Receipt

Notice is hereby given that persons receiving veterans' and war orphans' as-

sistance provided under Chapters 34 and 35 of title 38 of the United States Code are not precluded on account of the receipt of such assistance from simultaneously receiving financial assistance under programs of the U.S. Office of Education, Department of Health, Education, and Welfare.

Persons receiving financial assistance under programs of the U.S. Office of Education, Department of Health, Education, and Welfare should consult with the Veterans Administration to determine whether they may also be eligible to receive veterans' and war orphans' assistance.

Dated: July 8, 1969.

JAMES E. ALLEN, Jr.,
U.S. Commissioner of Education.

[F.R. Doc. 69-8296; Filed, July 14, 1969; 8:47 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 69-71]

EQUIPMENT, CONSTRUCTION, AND MATERIALS

Approval Notice

1. Certain laws and regulations (46 CFR, Chapter I) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels subject to Coast Guard inspection, on certain motorboats and other recreational vessels, and on the artificial islands and fixed structures on the outer Continental Shelf be of types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been granted as herein described during the period from May 26, 1969, to June 5, 1969 (List No. 16-69). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of title 46, United States Code, section 1333 of title 43, United States Code, and section 198 of title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.4 (a) (2) and (g)). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction and materials are set forth in 46 CFR, Parts 160 to 164.

3. The approvals listed in this document shall be in effect for a period of 5 years from the date of issuance, unless sooner canceled or suspended by proper authority.

LIFE WINCHES FOR MERCHANT VESSELS

Approval No. 160.015/94/0, lifeboat winch, Type 55G-MKII; approval is limited to mechanical components only and for a maximum working load of 11,000 pounds pull at the drums (5,500 pounds per fall); identified by general arrangement drawings No. W1-F-002, revision C, dated May 1, 1969, and No. W1-F-002-H, revision A, dated November 21, 1968; and drawing list, revision B, dated May 29, 1969, manufactured by Marine Safety Equipment Corp., Foot of Wycoff Road, Farmingdale, N.J. 07727, effective June 5, 1969.

SIGNALS, DISTRESS, HAND RED FLARE, FOR MERCHANT VESSELS

Approval No. 160.021/11/0, Bristol marine hand red flare distress signal, 500 candlepower, 2 minutes burning time, Bristol dwg. No. 506, revised May 14, 1958, manufactured by Bristol Flare Corp., State Road, Bristol, Pa. 19007, for Kilgore Corp., Toone, Tenn. 38381, effective May 26, 1969.

WATER, EMERGENCY DRINKING (IN HERMETICALLY SEALED CONTAINERS), FOR MERCHANT VESSELS

Approval No. 160.026/32/1, container for emergency provisions for lifeboats and life rafts, dwg. No. RF-3, dated July 15, 1964, markings: $\frac{1}{4}$ ration for lifeboats, $\frac{1}{2}$ ration for inflatable life rafts, manufactured by H & M Packing Corp., 915 Ruberta Avenue, Glendale, Calif. 91201, effective June 3, 1969. (It is an extension of Approval No. 160.026/32/1, dated July 30, 1964.)

Approval No. 160.026/37/0, container for emergency provisions for lifeboats and life rafts, dwg. No. 1367, dated June 22, 1964, and revised June 30, 1964, marking: $\frac{1}{4}$ ration for lifeboats, $\frac{1}{2}$ ration for inflatable life rafts, manufactured by Globe Equipment Corp., 257 Water Street, Brooklyn, N.Y. 11201, effective June 3, 1969. (It is an extension of Approval No. 160.026/37/0, dated July 2, 1964.)

LIFEBOATS FOR MERCHANT VESSELS

Approval No. 160.035/397/6, 24'0" x 8'0" x 3'5" fibrous glass reinforced plastic (FRP), motor-propelled lifeboat, without radio cabin or searchlight (Class 1), 37-person capacity, identified by general arrangement dwg. No. P-24-ID Rev. N, dated April 10, 1969, 46 CFR 160.035-13(c), marking. Weights: condition "A" = 3,994 pounds, condition "B" = 11,114 pounds, manufactured by Marine Safety Equipment Corp., Foot of Wycoff Road, Farmingdale, N.J. 07727, effective June 3, 1969. (It supersedes Approval No. 160.035/397/6, dated Apr. 17, 1969 to show revision date of Dwg. List.)

SIGNALS, DISTRESS, HAND, ORANGE SMOKE, FOR MERCHANT VESSELS

Approval No. 160.037/6/0, Bristol marine hand orange smoke distress signal, Bristol dwg. No. 600, revised June 2, 1958, manufactured by Bristol Flare Corp.,

State Road, Bristol, Pa. 19007, for Kilgore Corp., Toone, Tenn. 38381, effective May 26, 1969.

INCOMBUSTIBLE MATERIALS FOR MERCHANT VESSELS

Approval No. 164.009/37/0, "Foster Insulfas Sealer 31-26" composition type incombustible material consisting solely of Foster 31-26 noncombustible coating and sealfas open weave glass cloth, identical to that referred to in National Bureau of Standards Test Report No. TG10210-1974:FP3363, dated April 30, 1966, formerly "Fiberseal"; also formerly "Foster Fiberseal Sealer", manufactured by Benjamin Foster Co., Post Office Box 59, Ambler, Pa. 19002, effective June 5, 1969. (It is an extension of Approval No. 164.009/37/0, dated July 31, 1964, and change of address of manufacturer.)

Approval No. 164.009/78/0, "Foster Insulfas Adhesive 81-15" composition type incombustible material, identical to that referred to in National Bureau of Standards Test Report No. TG10210-2107:FR3634, dated December 3, 1963, manufactured by Benjamin Foster Co., Post Office Box 59, Ambler, Pa. 19002, effective June 5, 1969. (It is an extension of Approval No. 164.009/78/0, dated July 31, 1964, and change of address of manufacturer.)

Approval No. 164.009/80/0, Foster Insulfas coatings 31-30, composition type incombustible material, identical to that referred to in National Bureau of Standards Test Report No. TG10210-2109:FR3636, dated May 11, 1964, manufactured by Benjamin Foster Co., Post Office Box 59, Ambler, Pa. 19002, effective June 5, 1969. (It is an extension of Approval No. 164.009/80/0, dated July 7, 1964, and change of address of manufacturer.)

Approval No. 164.009/127/0, "No. 75 Ultralite MC Insulation," glass wool insulation type incombustible material identical to that described in National Bureau of Standards Test Report No. TG10210-1656:FP2855 (Test No. 122822), dated December 13, 1949, approved in a density of 0.75 pound per cubic foot, manufactured at Plant No. 5 by Gustin Bacon Manufacturing Co., Post Office Box 19079, Kansas City, Kans. 66118, effective June 4, 1969.

Approval No. 164.009/128/0, "No. 100 Ultralite MC Insulation," glass wool insulation type incombustible material identical to that described in National Bureau of Standards Test Report No. TG3610-1519:FP2622, dated May 19, 1948, approved in a 1-pound per cubic foot density, manufactured at Plant No. 5 by Gustin Bacon Manufacturing Co., Post Office Box 19079, Kansas City, Kans. 66118, effective June 4, 1969.

Approval No. 164.009/129/0, "No. 150 Ultralite MC Insulation," glass wool insulation type incombustible material identical to that described in National Bureau of Standards Test Report No. TG10210-1656:FP2855 (Test No. 122822), dated December 13, 1949, approved in

a density of 1.48 pounds per cubic foot, manufactured at Plant No. 5 by Gustin Bacon Manufacturing Co., Post Office Box 19079, Kansas City, Kans. 66118, effective June 4, 1969.

Dated: July 8, 1969.

W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.

[P.R. Doc. 69-8267; Filed, July 14, 1969;
8:45 a.m.]

Federal Aviation Administration ENGINEERING AND MANUFACTURING DISTRICT OFFICE AT HARRISBURG-YORK STATE AIRPORT, NEW CUMBERLAND, PA.

Notice of Relocation

Notice is hereby given that on or about July 15, 1969, the Engineering and Manufacturing District Office at Harrisburg-York State Airport, New Cumberland, Pa., will be relocated to Harrisburg, Pa. It will continue to provide services to the aviation industry and public without interruption, at the new location. Communications to the District Office should be addressed as follows:

Engineering and Manufacturing District Office, No. 44, Department of Transportation, Federal Aviation Administration, Federal Office Building, 228 Walnut Street, Harrisburg, Pa. 17108.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in New York, N.Y., on July 2, 1969.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[P.R. Doc. 69-8281; Filed, July 14, 1969;
8:46 a.m.]

National Transportation Safety Board

[Docket No. SS-R-6]

INVESTIGATION OF DERAILMENT OF PENN CENTRAL PASSENGER TRAIN

Notice of Hearing

In the matter of investigation of accident involving derailment of Penn Central Passenger Train No. Second 115 at Glenn Dale, Md., June 28, 1969, with subsequent numerous injuries to passengers.

Notice is hereby given that an Accident Investigation Hearing on the above matter will be held commencing at 9 a.m., e.d.t., on Monday, August 18, 1969, in conference room 2008, on the second floor of Federal Office Building No. 7, at 17th and H Streets NW., Washington, D.C.

Dated this 3d day of July 1969.

[SEAL] JOHN H. REED,
Chairman, Board of Inquiry.

[P.R. Doc. 69-8278; Filed, July 14, 1969;
8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20291; Order 69-7-49]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Issued under delegated authority July 9, 1969.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 2 and Joint Conferences 1-2 and 1-2-3 of the International Air Transport Association (IATA), and adopted by mail vote. The agreement has been assigned the above-designated CAB agreement number.

The agreement amends Construction Rule for Passenger Fares by clarifying the definition of a one-way backhaul journey as any journey which for fare calculation purposes is not a complete round- or circle-trip journey entirely by air.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that Resolutions 200 (Mail 888) 014a, JT12 (Mail 590) 014a, and JT123 (Mail 590) 014a, which are incorporated in the above-designated agreement are adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Agreement CAB 21045 is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[P.R. Doc. 69-8297; Filed, July 14, 1969;
8:47 a.m.]

[Docket No. 20486, etc.]

MOHAWK AIRLINES, INC.

Notice of Postponement of Hearing

Mohawk Airlines, Inc., Rochester-Pittsburgh—Subpart M.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the public hearing in the above-entitled matter now assigned to be held on July 29, 1969, is hereby postponed to August 7, 1969, at 10 a.m., e.d.s.t., in room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., July 10, 1969.

[SEAL]

ROBERT M. JOHNSON,
Hearing Examiner.

[P.R. Doc. 69-8298; Filed, July 14, 1969;
8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 18594-18597; FCC 69-739]

PLEASANT BROADCASTING CO. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Pleasant Broadcasting Co., Mount Pleasant, Iowa, Docket No. 18594, File No. BP-17235; Requests: 1130 kc, 250 w, Daytime; Donald K. Van Slyke, Vern McDonough, James J. Delmont, Alfred R. Sundberg, Dwight C. Vredenburg, Marion M. Coons, Virgil Meyer, Robert M. Stone, Clarence H. Morton, W. M. Eikenberry, John E. King, Aldo Della Vedova, George R. Garton, and Levorah Keller, doing business as Chariton Radio Co., Chariton, Iowa, Docket No. 18595, File No. BP-17559; Requests: 1130 kc, 500 w, DA, Daytime; BCST Company of Iowa, Inc., Mount Pleasant, Iowa, Docket No. 18596, File No. BP-17571; Requests: 1130 kc, 250 w, Daytime; Frank J. Herges, James J. Delmont, Vern McDonough, Leo C. Brau, E. N. Walker, Clarence C. Van Amerongen, Edwin W. Poock, James T. McCabe, Dwight C. Vredenburg, Marion M. Coons, and William J. Hart, doing business as Mount Pleasant Radio Co., Mount Pleasant, Iowa, Docket No. 18597, File No. BPH-5770; Requests: 105.5 mc, No. 288; 3 kw; 201 feet; for construction permits.

1. The Commission has under consideration the above-captioned and described applications. The Chariton, Iowa, and Mount Pleasant, Iowa, AM applications are mutually exclusive because of mutual overlap of 0.05 mv/m and 1 mv/m contours. The Mount Pleasant, Iowa, FM application is joined herein because of common questions pertaining to it and the Chariton AM application.

2. According to an agreement submitted with the FM application, it was applicant's intention to form an Iowa limited partnership. This agreement, however, appears to be defective in a number of particulars. Although eight of the 11 members of the partnership are described as limited partners, there is no such statement regarding the status of the other three, except for certain language describing their obligations, which suggests that they may be general partners. This possibility is negated by the statement in section II, table I of the application which lists all 11 as limited partners. In addition, the agreement specifies that the partnership is to continue until the expressed purpose is accomplished. Since the purpose is said to be the obtaining of a permit au-

thorizing construction and operation of the station, the partnership would apparently terminate upon grant of the application. Finally, section X of the agreement refers without explanation to the existence of corporation rather than a partnership. Similar problems are involved in the Chariton AM application. In this instance too the partnership terminates with accomplishment of the expressed purpose, viz the obtaining of a permit for construction and operation of the station. The agreement refers to an intention to form a corporation upon grant of the permit. Although a corrective amendment to this application has been filed, section II of the application continues to show all the participants as limited partners. Because of these unresolved questions, issues will be specified to determine the legal status of these applicants and whether these applicants have or can comply with applicable requirements regarding operation of limited partnerships in the State of Iowa.

3. As to the Chariton application, approximately \$87,805 is shown to be required to construct and operate the proposed station for 1 year without revenue. To meet this requirement, reliance is placed on prepayment of expenses (\$2,500) and bank loans (totaling \$92,000) to the partners who will provide the station's financing. Although the banks in question appear willing to provide these amounts, neither bank letter sets forth the applicable terms and conditions, and neither partner has indicated the basis upon which the funds would be supplied, nor the amount of first-year repayments, if any. Accordingly, an issue will be specified to determine the circumstances under which these amounts would be available.

4. In Suburban Broadcasters, 30 FCC 1020, 20 RR 951 (1961), and our public notice of August 22, 1968 (FCC 68-487), we indicated that applicants were expected to provide full information on their awareness of and responsiveness to local community needs and interests. Chariton Radio does not appear to have made an adequate survey and none of the applicants have adequately listed the suggestions received regarding community needs or the programing proposed to meet these needs as evaluated. Thus, we are unable at this time to determine whether any of the applicants are aware of and responsive to the needs of their areas. Accordingly, Suburban issues are required.

5. The Chariton, Iowa AM proposal is mutually exclusive with the AM applications for Mount Pleasant, Iowa. Consequently, if the Chariton applicant is found qualified, it will be necessary to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

6. Except as indicated below, the applicants are qualified to construct and operate as proposed. However, because of the matters discussed above, the Commission is unable to make the statutory

finding that a grant of the applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing on the issues set forth below.

7. It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine the efforts made by Pleasant Broadcasting Co. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(2) To determine the efforts made by Chariton Radio Co. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(3) To determine the efforts made by BCST Company of Iowa, Inc., to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(4) To determine the efforts made by Mount Pleasant Radio Co. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(5) To determine whether Chariton Radio Co. and Mount Pleasant Radio Co. are or can be qualified to do business as limited partnerships in the State of Iowa.

(6) To determine whether and under what circumstances Chariton Radio Co. would have available to it the additional \$85,305 required to construct and operate for 1 year without revenue and thus demonstrate its financial qualifications.

(7) To determine the areas and populations which would receive primary service from the Chariton Radio Co., Pleasant Broadcasting Co., and BCST Company of Iowa, Inc., proposals and the availability of other primary aural service to such areas and populations.

(8) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals referred to in issue 7 would best provide a fair, efficient, and equitable distribution of radio service.

(9) To determine, in the event it is concluded that a choice between the applications referred to in issue 8 should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

(10) To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the applications should be granted.

8. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an

intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

9. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: July 2, 1969.

Released: July 10, 1969.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 69-8293; Filed, July 14, 1969;
8:47 a.m.]

[Docket Nos. 18531, 18532; FCC 69R-296]

VISTA BROADCASTING CO., INC., AND KNET, INC.

Memorandum Opinion and Order Enlarging Issues

In re applications of Vista Broadcasting Co., Inc., Palestine, Tex., Docket No. 18531, File No. BPH-6292; KNET, Inc., Palestine, Tex., Docket No. 18532, File No. BPH-6405; for construction permits.

1. Vista Broadcasting Co., Inc., (Vista), and KNET, Inc. (KNET), are mutually exclusive applicants for a new FM broadcast station to operate on Channel 232, at Palestine, Tex. Their applications were designated for hearing on a standard comparative issue by Commission Order, FCC 69-425, released April 28, 1969, 34 F.R. 7193. In that order, each of the applicants was found qualified to construct and operate the proposed station. KNET, by a motion filed May 16, 1969, seeks to enlarge the issues to determine whether the stockholders of Vista have net liquid current assets sufficient to meet their obligations to the applicant and, in the light of the facts adduced, to determine whether Vista is financially qualified.² KNET notes that Vista, in its application, estimates that it will require \$58,711 to construct and operate the proposed station for the first

year and that, as amended, Vista's application proposes to finance its station by \$20,000 in stock subscriptions, \$20,000 in loans from stock subscribers, and a \$20,000 loan from the East Texas Bank of Palestine, Tex. KNET observes that none of the balance sheets associated with the application are dated and that the application is more than a year old; thus, it is impossible to evaluate the present financial situation of the four stock subscribers, each of whom is committed to supply a \$5,000 capital investment and a loan of \$5,000. Moreover, KNET argues that an analysis of the balance sheets does not show that any of the stock subscribers have net liquid current assets to meet their commitments,³ and as to some, the liabilities listed actually exceed the current liquid assets. Based on the foregoing, KNET argues that the issue should be added. The Broadcast Bureau supports KNET's motion.

2. In opposition, Vista argues that KNET has misread the balance sheets of its stock subscribers and that had KNET taken into account such items as stocks, accounts receivable, and in some instances, real estate, it would have ascertained that each stock subscriber could meet his commitment to the corporation. Vista also relies on an amendment to its application filed concurrently with its opposition herein, which consists of recent balance sheets for each of the four stock subscribers upon which it relies.⁴

3. The Review Board has examined the balance sheets submitted by Vista in its recent amendment and agrees with the Bureau's supplementary comments that neither C. Rayburn Moore nor Jerry F. Fountaine have shown sufficient current liquid assets to meet their respective commitments to Vista. It is well established that receivables, stocks and bonds, and fixed assets, in the absence of proof of marketability or liquidity, afford no reasonable assurance that funds will, in fact, be available to meet commitments to an applicant for a radio station. See, e.g., Miami Broadcasting Corporation, FCC 67R-327, 9 FCC 2d 694. Without reliance on such assets, Moore's balance sheet reflects only \$5,800 in current assets and Fountaine's balance sheet reflects only \$3,180 in current assets. We will, therefore, add an issue to ascertain whether C. Rayburn Moore and Jerry F. Fountaine can meet their respective commitments to Vista Broadcasting Co., Inc.

4. Accordingly, it is ordered, That the Broadcast Bureau's request, filed June 23, 1969, is granted; that the motion to enlarge issues, filed May 16, 1969, by KNET, Inc., is granted to the extent indicated below, and is denied in all other respects; and that the issues in this proceeding are enlarged as follows:

² The liabilities shown on the balance sheets are not broken down to show current liabilities and long-term liabilities.

⁴ The Examiner accepted the amendment by order, 69M-795, released June 29, 1969.

(a) To determine whether C. Rayburn Moore and Jerry F. Fountaine can meet their respective stock subscriptions and loan commitments to Vista Broadcasting Co., Inc.;

(b) To determine, in light of the evidence adduced pursuant to (a) above, whether Vista Broadcasting Co., Inc. is financially qualified to construct and operate its proposed station.

5. *It is further ordered*, That the burdens of proceeding and proof under the issues added herein will be on Vista Broadcasting Co., Inc.

Adopted: July 9, 1969.

Released: July 10, 1969.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 69-8294; Filed, July 14, 1969;
8:47 a.m.]

TARIFF COMMISSION

[337-23]

COFFEE CONCENTRATES

Postponement of Hearing Date

On May 26, 1969, the Tariff Commission issued a notice of the institution of investigation No. 337-23 and ordered a public hearing in connection therewith to begin on July 22, 1969 (34 F.R. 8320) in respect to a complaint filed under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by Struthers Scientific and International Corporation of New York, N.Y., which alleged unfair methods of competition and unfair acts in the importation into and sale of coffee concentrates in the United States in violation of the provisions of section 337. On June 20, 1969, the Commission issued a notice of an amendment of the scope of investigation No. 337-23 (34 F.R. 9829).

In view of requests therefor from interested parties and for other reasons, notice is hereby given of the postponement of the hearing in this investigation so that it will begin on September 16, 1969, at 10 a.m., e.d.s.t., in the Hearing Room of the Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., rather than on July 22, 1969, as originally ordered. Interested parties desiring to appear and give testimony at the hearing should follow the requirements stated in the original notice in the FEDERAL REGISTER of May 29, 1969 (34 F.R. 8320).

Issued: July 10, 1969.

By order of the Commission.

[SEAL] DONN N. BENT,
Secretary.

[F.R. Doc. 69-8299; Filed, July 14, 1969;
8:47 a.m.]

¹ Commissioners Bartley, Wadsworth and Johnson absent; Commissioners Robert E. Lee and H. Rex Lee concurring in the result.

² The Board also has before it the Broadcast Bureau's statement in support of the motion to enlarge, filed May 29, 1969; Vista's opposition to motion to enlarge, filed June 12, 1969; Broadcast Bureau's request to file supplementary comments, filed June 23, 1969; and Broadcast Bureau's supplementary comments, filed June 23, 1969. The Bureau's request to file supplementary comments is appropriate in the circumstances of the case and the supplementary comments will be considered.

ATOMIC ENERGY COMMISSION

STATE OF SOUTH CAROLINA

Proposed Agreement for Assumption of Certain AEC Regulatory Authority

Notice is hereby given that the U.S. Atomic Energy Commission is publishing for public comment, prior to action thereon, a proposed agreement received from the Governor of the State of South Carolina for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

A résumé, prepared by the State of South Carolina and summarizing the State's proposed program for control over sources of radiation, is set forth below as an appendix to this notice. The appendix referenced in the résumé is included in the complete text of the program. A copy of the program, including proposed South Carolina regulations, is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., or may be obtained by writing to the Director, Division of State and Licensee Relations, U.S. Atomic Energy Commission, Washington, D.C. 20545. All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed agreement should send them, in triplicate, to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, within 30 days after initial publication of this notice in the FEDERAL REGISTER.

Exemptions from the Commission's regulatory authority which would implement this proposed agreement, as well as other agreements which may be entered into under section 274 of the Atomic Energy Act, as amended, were published as Part 150 of the Commission's regulations in FEDERAL REGISTER issuances of February 14, 1962, 27 F.R. 1351; April 3, 1965, 30 F.R. 4352; September 22, 1965, 30 F.R. 12069; March 19, 1966, 31 F.R. 4668; March 30, 1966, 31 F.R. 5120; December 2, 1966, 31 F.R. 15145; July 15, 1967, 32 F.R. 10432; June 27, 1968, 33 F.R. 9388; and April 16, 1969, 34 F.R. 6517. In reviewing this proposed agreement, interested persons should also consider the aforementioned exemptions.

Dated at Washington, D.C., this 25th day of June 1969.

For the Atomic Energy Commission.

W. B. McCool,
Secretary.

PROPOSED AGREEMENT BETWEEN THE UNITED STATES ATOMIC ENERGY COMMISSION AND THE STATE OF SOUTH CAROLINA FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, the U.S. Atomic Energy Commission (hereinafter referred to as the Commission) is authorized under section 274 of the

Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act) to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8 and section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of South Carolina is authorized under section 1-400.15 of the 1962 Code of Laws of South Carolina and cumulative supplement thereto to enter into this Agreement with the Commission; and

Whereas, the Governor of the State of South Carolina certified on June 4, 1969, that the State of South Carolina (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on _____ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemption from licensing of those materials subject to this Agreement; and

Whereas, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

ARTICLE I. Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

- Byproduct materials;
- Source materials; and
- Special nuclear materials in quantities not sufficient to form a critical mass.

ART. II. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

- The construction and operation of any production or utilization facility;
- The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

ART. III. Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the

manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ART. IV. This Agreement shall not affect the authority of the Commission under subsection 161 b or c 1 of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

ART. V. The Commission will use its best efforts to cooperate with the State and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulations of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

ART. VI. The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ART. VII. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that such termination or suspension is required to protect the public health and safety.

ART. VIII. This Agreement shall become effective on September 15, 1969, and shall remain in effect unless, and until such time as it is terminated pursuant to Article VII.

Done at _____, in triplicate, this _____ day of _____

For the United States Atomic Energy Commission.

Done at Columbia, S.C., in triplicate, this _____ day of _____

For the State of South Carolina.

Governor.

FOREWORD

South Carolina is dedicated to the purpose of protecting and improving the lot of its citizens. This dedication is realized, in part, by its full participation in the age of atoms, in due recognition of the many benefits to be derived from the peaceful uses of nuclear energy and its byproducts.

To discharge its responsibility to the citizens of this State to protect them from possible harmful effects of ionizing radiation, the 1967 General Assembly enacted the Atomic Energy and Radiation Control Act, which at one time recognizes the partnership that must exist between the fostering of nuclear enterprise and the protection against potential radiation hazards.

This Act authorizes the Governor to enter into an agreement with the Federal Government whereby certain regulatory functions now exercised by the Federal Government in the licensing and control of byproduct material, source material and special nuclear material in quantities not sufficient to create a critical mass will be transferred to the State.

The Act also designates the South Carolina State Board of Health as the agency which shall be responsible for the control of radiation sources. A complete regulatory program consistent with that conducted by the U.S. Atomic Energy Commission is authorized.

The following pages will present a description of past, present, and future activities of the State Board of Health in the field of Radiological Health, including the organization, procedures, and resources which will be brought to bear on the new responsibility assumed as a result of the aforementioned agreement.

HISTORY

As early as 1947 the South Carolina State Board of Health became aware of and concerned about the occupational exposure of workers to static eliminators. Over fifty of these devices were located, surveyed, and recommendations for shielding and access control were made. No leak-testing was performed as equipment was not available at the time.

Also at this time a program designed to reduce occupational exposure of shoe salesmen to X-rays from fluoroscopic shoe-fitting machines was instituted. This was later followed by more complete regulations covering all aspects of the use of these devices, and finally they were outlawed altogether. Ninety-six shoe-fitting machines in all were eliminated.

A voluntary X-ray program was begun in 1953, whereby services of the South Carolina State Board of Health were made available for the purpose of inspecting X-ray installations and recommending corrective actions where needed. This program received very good response, and during the period 1953-1968, 965 machines were inspected and 38 percent were found to be deficient in some respect. Eighty percent of these deficiencies were corrected as a result of recommendations and followup inspections. This included 662 dental SurPak examinations, resulting in the installation of 63 aluminum filters and 135 collimators. More recently, during the period in which more comprehensive radiation control regulations were being developed, a program of voluntary registration of X-ray machines was begun. By December 31, 1968, 1,269 X-ray machines were registered.

A radium management program was begun in 1965 when it was discovered that the radium storage facility in a large hospital was contaminated by a leaking source, which the hospital no longer possessed. The services of the South Carolina State Board of Health were offered in this area of concern, and this voluntary service resulted in the registration of 331 radium sources in 23 facilities totaling 2,352 milligrams. Of these sources, 254 have been leak-tested and 29 leaking sources have been detected. All owners of leaking sources of radium voluntarily disposed of the leaking radium sources or had them reencapsulated. The Agency provides assistance to radium users in the proper disposal of unwanted or leaking sources. Inspections were based on recommendations in NBS Handbook 73. A written report with recommendations was left with the users after each inspection. The degree of compliance with recommendations was 90 percent. Followup visits were made when indicated.

Another activity in the area of radioactive materials has been the accompanying of AEC Inspectors on the occasion of inspection vis-

its to South Carolina. Within the last 8 years, South Carolina personnel have accompanied Atomic Energy Commission Inspectors on 75 percent of the inspections within the State. This has served the valuable purpose of familiarizing the staff with the inspection of licenses of radioactive materials, as well as the investigation of incidents involving licensed material.

In 1956, as a result of recommendations made by the Savannah River Advisory Board, the South Carolina Water Pollution Control Authority conservatively entered into an environmental monitoring program to determine the effect, if any, of the Savannah River Plant of the Atomic Energy Commission on the aquatic environment. Initially, this program consisted of one sampling point on the Savannah River below the plant effluent, which was subjected to gross alpha and beta analysis. Continuous paddlewheel samplers were later added at three locations, and more rigorous analytical procedures were employed, including specific isotope analysis and gamma spectroscopy when indicated by gross measurements.

The location of the Carolinas-Virginia Nuclear Power Associates' small power reactor at Parr, S.C., as well as the nuclear submarine repair facility at the Charleston Naval Shipyard prompted considerable expansion and sophistication of the environmental program to include over 150 sampling points, sampling air, water, precipitation, bottom muds and silt, vegetation, and milk. These samples were subjected to gross alpha and beta analysis, specific isotope analysis and gamma scans. Approximately 1,200 analyses per year were performed. The number of sampling points, as well as items sampled and analyzed underwent change as new nuclear installations were announced. Modern, well equipped laboratory facilities were provided for this work.

During the past year the responsibility for the environmental program was transferred to the South Carolina State Board of Health, in close cooperation with the South Carolina Pollution Control Authority.

Also during the past year regulations governing radioactive materials, X-ray machines and particle accelerators were adopted, after several meetings of the Technical Advisory Radiation Control Council, which met to consider in detail proposed regulations, and after public hearings to air the recommendations before the public. The Technical Advisory Radiation Control Council is a committee authorized by the Atomic Energy and Radiation Control Act to advise the State Board of Health on policy matters, including regulations.

PRESENT PROGRAM

The present program of the Division of Radiological Health consists of initiating the activities authorized by the Atomic Energy and Radiation Control Act, and continuing environmental monitoring, expanding the scope of this operation to take care of the burgeoning nuclear industries announced for South Carolina.

Licensing of radium is now mandatory. All X-ray machines and particle accelerators were required to be registered by March 31, 1969. The portions of the program dealing with these requirements have begun.

The radium management inspection determines compliance with regulations and terms of the license. Items checked are shielding, storage, access control, posting of signs, records, leak-testing, survey meters, personnel monitoring, and transport equipment. Again, other recommendations of a helpful nature are made.

The environmental program consists of sampling the environment in the vicinity of nuclear installations existing, under con-

struction or announced. Preoperational surveillance activities consist of determining radioactivity levels in environmental samples as a baseline against which to compare those levels found after operations commence. Surveillance around existing facilities is conducted to determine if there is any impact on the environment as a result of release of radioactivity. If gross alpha and beta determinations show an increase, gamma and alpha spectrometry or specific isotope analysis is used to determine the source. An experimental program to determine the efficacy of using thermo-luminescent dosimetry as an environmental monitor is being conducted.

FUTURE PLANS

Future plans will include extending the regulatory program to licensing and regulating the use of those radioactive materials presently under the purview of the U.S. Atomic Energy Commission, dependent upon signing an agreement with the Atomic Energy Commission. Details of the regulatory procedures and policies to be followed are given in a later section.

An in-house formal training program in radiological health will be conducted for new staff personnel on a scheduled basis, and will utilize outside instructors where they are available.

SCOPE OF PROBLEM

There are an estimated 2,000 X-ray units in South Carolina, approximately 600 of these being dental units. The number of Atomic Energy Commission licenses for byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass currently in effect is 142. There are 331 known radium sources in use at 23 facilities totaling 2,352 milligrams. Numerous particle accelerators exist in this State.

Four large commercial nuclear power reactors are under construction, three of them being at one location. Also under construction is a nuclear fuels fabrication plant. Announcements have been made by two separate companies of their intentions to construct a nuclear fuels reprocessing plant. Other installations which indicate the need for environmental surveillance activities are the Savannah River Plant of the Atomic Energy Commission and the nuclear submarine repair base at Charleston, S.C.

ORGANIZATION AND STAFF

Under the provisions of the Atomic Energy and Radiation Control Act, the South Carolina State Board of Health is designated as the agency to exercise regulatory functions in radiological health. The organization of the State Board of Health is shown in Appendix, Chart 1. A Technical Advisory Radiation Control Council, appointed by the Governor, is also established. The purpose of this Council is to advise the State Board of Health on matters pertaining to ionizing radiation including standards, rules and regulations to be adopted, modified, promulgated or repealed by the Agency. Present membership of the Council is given in Table 1 of the appendix.

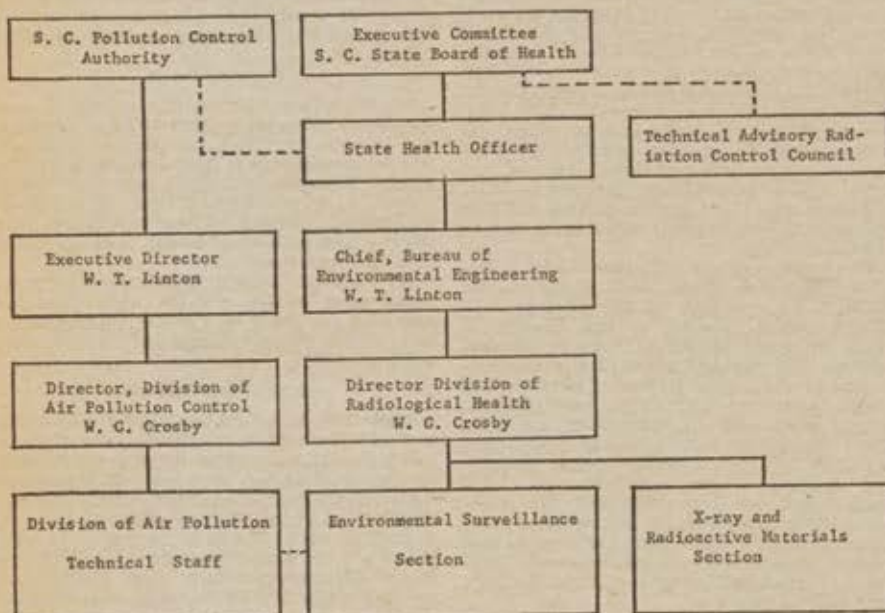
To assist the State Board of Health and staff in judging applications for nonroutine medical use of radioactive materials a Medical Advisory Committee has been appointed, the membership of which is shown in Table 2 of the appendix.

The functional radiological health program is operated by the Division of Radiological Health which, in turn, is a division of the Bureau of Environmental Engineering. The director of this division is also the director of the Division of Air Pollution Control, and spends his time equally divided between the

two divisions. In addition to State Board of Health staff members, experienced technicians are assigned to the Division of Radiological Health from the Bureau of Pollution Control to do work in environmental surveillance.

The line of authority and responsibility is shown on the accompanying diagram. The dotted line shown between the State Health Officer and the Pollution Control Authority indicates that he is, ex officio, Chairman of the Pollution Control Authority. There is also

the statutory requirement that two additional members of the Authority be appointed from the Executive Committee of the State Board of Health. The dotted line between the Technical Staff of the Division of Air Pollution Control and the Environmental Surveillance Section of the Division of Radiological Health is intended to show the assignment of personnel and technical services by the Pollution Control Authority to the Division of Radiological Health.



REGULATORY PROCEDURES AND POLICY

Licensing and registration. The South Carolina State Board of Health has been designated the State Agency with the responsibility to develop an all-encompassing radiological health program in accordance with sections 1-400.11 through 1-400.16 of the 1962 Code of Laws of South Carolina and supplement thereto, the Atomic Energy and Radiation Control Act of South Carolina. The Division of Radiological Health has the responsibility for the operational phases of this program.

This program will regulate the safe use of all sources of ionizing radiation in the State including radium and accelerator produced nuclides, X-ray producing machines and particle accelerators. Certain small quantities of radionuclides as well as electronic devices which produce X-rays incidental to their operations in intensities insufficient to constitute a health hazard will be exempt. Licensing of all radionuclides including radium, and registration of X-ray machines and particle accelerators are features of this program. All regulations governing these sources are substantially in accord with the suggested State regulations as published by the Council of State Governments in cooperation with the Atomic Energy Commission and the U.S. Public Health Service. Every effort will be made to conduct the program in a fashion that is compatible with those operated by other agreement States and the Atomic Energy Commission.

The licensing program will be patterned after the one established by the Atomic Energy Commission and will use applicable criteria contained in regulations as published by the Atomic Energy Commission. The director and key staff members will evaluate each radioactive material license application, including prelicensing visits if this is indicated.

When applications are received for unusual uses, additional advice will be sought. When applications for nonroutine medical uses are received the Medical Advisory Committee will be consulted. When applications for specific licenses are approved, licenses will be signed by the State Health Officer for the South Carolina State Board of Health.

Inspection. Inspection to determine radiation safety and compliance with pertinent regulations, and provisions of license or registration will be conducted as needed by division staff members. These members consist of the Director, the Radiological Health Specialist, Radiological Health Inspector and the Laboratory Technician III, who are or will be qualified by training and experience to conduct the inspections. Inspections will be either by prearrangement or unannounced during reasonable hours.

Licenses will be inspected on a priority basis determined by type of use, quantity of radioactive material, physical and chemical form, training, and experience of user, frequency of use and other factors in keeping with the experience gained by others including the Atomic Energy Commission and other agreement States. The initially planned frequencies are categorized as follows:

Classification of use	Usual inspection frequency
Industrial radiography:	
Fixed installations...	Once each 12 months.
Mobile operations...	Once each 6 months.
Operations involving waste disposal.	Once each 6 months.
Broad licensee—industrial, medical, or academic.	Once each 6-12 months.

Classification of use Usual inspection frequency

Other specific licenses — industrial, medical, or academic.

Once each 12-24 months.

These frequencies are subject to alteration and are presented as a depiction of the general policy at this time. Individual licenses will be judged on the particular circumstances associated with the terms of the license.

Inspections will include the observation of pertinent facilities and equipment; a review of use procedures and radiation safety practices; a review of records of radiation surveys, personnel exposure, and receipt and disposition of licensed materials; and instrument surveys to assess radiation levels incident to the operation—all as appropriate to the scope and conditions of the license and applicable regulations.

At the start and conclusion of an inspection, personal contact will be at management level whenever possible. Following the inspections, results will be discussed with the license management, appropriate tentative recommendations will be made and questions answered.

Investigations will be made of all reported or alleged incidents to determine the conditions and exposures incident thereto and to determine the steps taken for correction, cleanup, and the prevention of similar incidents in the future.

Radiological assistance in the form of monitoring, liaison with appropriate authorities, and recommendations for area security and cleanup will be available from the Agency on the occasion of incidents.

Reports will be prepared covering each inspection or investigation. The reports will be reviewed by a senior staff member and submitted to the Director of the Division of Radiological Health.

All inspectors will keep abreast of changes and developments in the field of radioactive materials by attending training courses, seminars and symposia, as well as in-house training which will be required.

Compliance and enforcement. The status of compliance with regulations, registration, or license conditions will be determined through inspections and evaluations of inspection reports.

Where there are items of noncompliance, the licensee shall be so informed at the time of inspection. When the items are minor and the licensee agrees at the time of inspection to correct them, written notice at the completion of the inspection will list the items of noncompliance, confirm corrections made at the time, and inform the person that a review of other corrective action will be made at the next inspection.

Where items of noncompliance of a more serious nature occur, the licensee will be informed by letter of the items of noncompliance and required to reply within a stated time as to the corrective action taken and the date completed, or expected to be completed. Assurance of corrective action will be determined by a followup inspection or at the time of the next regular inspection.

The terms and conditions of a license, upon request by the licensee, may be amended, consistent with the Act or regulations, to meet changing conditions in operations or to remedy minor items of noncompliance. The Agency may amend, suspend or revoke a license in the event of continuing refusal of the licensee to comply with terms and conditions of the license, the Act, or regulations or failure to take adequate action concerning items of noncompliance. Prior to such action,

the Agency shall notify the licensee of its intent to amend, suspend or revoke the license and provide the opportunity for a hearing.

Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, it may, in accordance with the Act, without notice of hearing, issue a regulation or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. The Agency, in the event of an emergency, is empowered to impound or order the impounding of sources of ionizing radiation upon findings that the possessor is unable to observe or is not observing the provisions of the Act or regulations issued thereunder. After these actions the licensee still has right to a hearing.

A court order directing a person to comply, or enjoining practices in violation of the Act or regulations, may be sought by the Attorney General in the appropriate court upon request of the Agency, after notice to such persons and ample opportunity to comply has been afforded.

The Agency will use its best efforts to obtain compliance through cooperation and education. Only in instances of repeated non-compliance, willful violation, or where serious potential hazards exist, will the full legal procedures normally be employed.

Effective date of license transfer. Any person who, on the effective date of the agreement with the Atomic Energy Commission, possesses a license issued by the Federal Government shall be deemed to possess a like license issued by the Agency which shall expire either 90 days after the receipt from the Agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

Compatibility and reciprocity. In promulgating rules and regulations, the Agency has, insofar as practicable, avoided requiring dual licensing and has provided for reciprocal recognition of other state and federal licenses.

Radiological emergency capability. The Division of Radiological Health has maintained the capability for handling radiological emergencies since 1959. This capability includes training of personnel, proper monitoring instruments, and liaison with other agencies such as State Highway Patrol, Atomic Energy Commission, Savannah River Plant, and U.S. Public Health Service.

As a result of our Radium Management Program, additional capability was formulated in 1965 to handle other radiological emergencies such as lost or damaged radium sources, overexposures, contamination, or transportation incidents. Additional personnel were trained, better instruments purchased and maintained, "emergency kits" put together for immediate use, and a system for telephone communications instituted. Emergency plans of other groups and agencies involving radiological incidents were reviewed by our Division.

Future plans for emergency procedures involve first of all a thorough review of our existing plan in light of the new role as an agreement state. A more formal plan will be instituted delineating the responsibility of each group or agency. Radiological Emergency Assistance Teams will be organized and trained in areas of major radiological activity. The Division of Radiological Health, which will be responsible for the program, will coordinate the new plan so that when and if an emergency does occur a systematic procedure will be followed.

[F.R. Doc. 69-7644; Filed, June 30, 1969; 8:45 a.m.]

[Dockets Nos. 50-317 and 50-318]

BALTIMORE GAS AND ELECTRIC CO.

Notice of Issuance of Provisional Construction Permits

Notice is hereby given that, pursuant to the initial decision of the Atomic Safety and Licensing Board, dated June 30, 1969, the Director of the Division of Reactor Licensing has issued Provisional Construction permits Nos. CPPR-63 and CPPR-64 to the Baltimore Gas and Electric Co. for the construction of two pressurized water nuclear reactors, designated as the Calvert Cliffs Nuclear Power Plant Units 1 and 2, at the applicant's site on the western shore of the Chesapeake Bay in Calvert County, Md., about 10 miles southeast of Prince Frederick, Md. The reactors are each designed for initial operation at approximately 2,440 thermal megawatts.

A copy of the initial decision is on file in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 7th day of July 1969.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,

Division of Reactor Licensing.

[F.R. Doc. 69-8264; Filed, July 14, 1969; 8:45 a.m.]

FEDERAL MARITIME COMMISSION

EVANS PRODUCTS CO. AND RETLA STEAMSHIP CO.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Amy Scupl, Esq., Galland, Kharasch, Calkins & Lippman, 1824 R Street NW., Washington, D.C. 20009.

Agreement 9549-3 between Evans Products Co. and Retla Steamship Co., modifies Article 9 of the basic agreement by expanding its geographic scope to include Okinawa, Hong Kong, Singapore, Malaysia, and Indonesia.

Dated: July 10, 1969.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 69-8300; Filed, July 14, 1969; 8:48 a.m.]

OCEANIC STEAMSHIP CO. ET AL.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

The Oceanic Steamship Co., Grace Line, Inc., Transatlantic Steamship Co., Ltd., and Flota Mercante Grancolumbiana, S.A.

Notice of agreement filed for approval by:

Mr. David F. Anderson, Senior Counsel, The Oceanic Steamship Co., 100 Mission Street, San Francisco, Calif. 94105.

An agreement between The Oceanic Steamship Co., Grace Line, Inc., Transatlantic Steamship Co., Ltd., and Flota Mercante Grancolumbiana, S.A., has been filed with the Commission and assigned Federal Maritime Commission No. 9805. The agreement provides for the parties to agree upon the compensation for and use of a common stevedore for the discharge of bulk and package concentrates from their vessels at Selby, Calif. In addition, the parties have the right of independent action and are to independently negotiate and enter into its separate stevedoring contract.

Dated: July 10, 1969.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 69-8301; Filed, July 14, 1969; 8:48 a.m.]

SOLOMON ISLANDS RATE AGREEMENT

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington Office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the *FEDERAL REGISTER*. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

John P. Meade, Esq., Graham & James, 1725 DeSales Street NW., Washington, D.C. 20036.

Agreement No. 9807 between Columbus Line and Pacific Australia Direct Line provides for the establishment of a rate-fixing agreement covering the transportation of freight and charges and practices relating thereto in the trade from the Pacific Coast of the United States to the Solomon Islands in accordance with the terms and conditions set forth in the agreement.

Dated: July 10, 1969.

By order of the Federal Maritime Commission.

THOMAS LIST,
Secretary.

[F.R. Doc. 69-8302; Filed, July 14, 1969; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. DA-1090-California]

PLUMAS NATIONAL FOREST

Finding and Order for Cancellation and Vacation

JULY 7, 1969.

Lands withdrawn in Power Site Classification No. 179 and Project Nos. 1258 and 2126, Docket No. DA-1090-California, U.S. Forest Service.

Application has been filed by the U.S. Forest Service for cancellation and vacation, respectively of the power withdrawals pertaining to the following described lands of the United States, located within the Plumas National Forest:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 25 N., R. 9 E.,

Sec. 22, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

(Approximately 30 acres.)

The subject lands lie on and near Spanish Creek, a tributary to East Branch North Fork Feather River, in the vicinity of the settlement of Keddie, Calif. The lands are withdrawn variously as follows: In Power Site Classification No. 179, approved May 13, 1927; pursuant to the filing on August 12, 1942 of an amendatory application for license for a 50-foot right-of-way for transmission line Project No. 1258; and pursuant to the filing on February 24, 1953, of an application for a preliminary permit for Project No. 2126. A subsequent application for a license for Project No. 2126 was denied by Commission order and opinion dated October 10, 1962. The license issued for Project No. 1258 expired on February 10, 1967, and the transmission line formerly under license is presently in operation under a special use permit issued by the U.S. Forest Service.

Although several upstream sites have been suggested for multipurpose projects, there are no known plans for power development that would affect the subject lands. An early Bureau of Reclamation plan proposed the construction of the American Valley Reservoir about 4 miles upstream from the subject lands. Such a development would only affect the subject lands if a conduit to develop the project were to be located on the lands. However, the U. S. Geological Survey reports this proposal to be economically infeasible because it would inundate existing improvements, including the town of Quincy, several miles of Western Pacific Railroad main line, and State Route No. 70. These same adverse effects make development of the 15-mile stretch of Spanish Creek between the town of Quincy and its confluence with the East Branch North Fork Feather River economically infeasible.

The Commission finds: Inasmuch as the lands have no significant power value, the power site withdrawals pertaining to the lands serve no useful purpose and should be canceled and vacated. Accordingly, it has no objection to cancellation of Power Site Classification No. 179 insofar as it affects the subject lands.

The Commission orders: The withdrawals of the lands pursuant to the applications for Project Nos. 1258 and 2126 are hereby vacated insofar as they affect the subject lands.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 69-8268; Filed, July 14, 1969; 8:45 a.m.]

[Docket No. RI70-1]

SUPERIOR OIL CO.

Offshore Transportation; Order on Petition for Special Relief

JULY 7, 1969.

On May 8, 1969, The Superior Oil Co. (Superior), filed a petition for special relief pursuant to ordering paragraph (C) of Opinion No. 546-A, issued March 20, 1969, in Area Rate Proceeding, dockets Nos. AR 61-2, et al., ----- FPC -----, with respect to natural gas pro-

duced offshore South Louisiana (Block 71 and 149 Fields), and transported to an onshore point by Superior for sale and delivery to Michigan Wisconsin Pipe Line Co., under Superior's FPC Gas Rate Schedule No. 7.

Ordering paragraph (C) of Opinion No. 546-A provides that a producer may, by reason of the fact that it is transporting or paying for the transportation of gas produced in the Federal Domain to a point onshore, file a rate reflecting the applicable onshore base area rate by petitioning for special relief setting forth the facts regarding each case. It further provides that the difference between the onshore and offshore rate shall be subject to refund as to all or any part thereof to which the producer ultimately is found not to be entitled. The applicable offshore and onshore area rates for the subject sale, as established by the Commission in its Opinion No. 546, issued September 25, 1968, ----- FPC -----, are 17 cents and 18.5 cents per Mcf at 15.025 p.s.i.a., respectively, subject to upward and downward B.t.u. adjustment. (Section 154.105(c)(1), regulations under the Natural Gas Act.)

Because of the stays issued by the Court and the Commission of Opinions Nos. 546 and 546-A, Superior has collected since October 1, 1968 (the effective date of the South Louisiana decision), and will continue to collect a rate in excess of the onshore area rate for Federal Domain gas transported onshore. Absent the stay, under paragraph (C) of Opinion No. 546-A, Superior would be allowed to collect the onshore area rate as of October 1, 1968, subject to refund.¹

If the Commission's stay is dissolved, Superior will reduce its rate to the applicable onshore rate, and all monies collected since October 1, 1968, in excess of the onshore area rate will be subject to refund under ordering paragraph (C) of Opinion No. 546. However, the question of refunds with respect to the difference between the applicable onshore and offshore rates collected since October 1, 1968 (including any such amounts collected after the dissolution of the stay), will await final action of the Commission on Superior's petition for special relief in the above-entitled proceeding.

The Commission orders:

(A) Superior's petition for special relief with respect to sales under its FPC Gas Rate Schedule No. 7 will be disposed of in the above-entitled proceeding.

(B) Notices of intervention or petitions to intervene in the above-entitled proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure of the Commis-

¹The Fifth Circuit Court of Appeals on May 13, 1969, granted a stay of the orders issued in this opinion until appeals are heard, but not beyond July 1, 1969, unless the Court orders otherwise. At the Court's request the Commission thereafter, by order issued May 29, 1969, stayed the rate reduction provisions of Opinions Nos. 546 and 546-A to and including Oct. 13, 1969. As a result of the Commission's action, the Court dissolved its stay on May 29, 1969.

sion (18 CFR 1.8 and 1.37(f)) on or before August 5, 1969.

By the Commission.

[SEAL]

KENNETH F. PLUMB,
Acting Secretary.

[P.R. Doc. 69-8269; Filed, July 14, 1969;
8:45 a.m.]

[Docket No. CP69-222]

TENNESSEE GAS PIPELINE CO.

Notice of Postponement of Filing

JULY 7, 1969.

Tennessee Gas Pipeline Co., a division of Tenneco Inc., docket No. CP69-222 (Phase II).

Notice is hereby given that the filing of prepared direct testimony set for July 11, 1969, by order issued June 13, 1969, and the hearing scheduled to commence on July 21, 1969, in the above-designated matter are postponed pending further notice.

By direction of the Commission.

KENNETH F. PLUMB,
Acting Secretary.

[P.R. Doc. 69-8270; Filed, July 14, 1969;
8:45 a.m.]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regulations
Temporary Regulation F-50]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the customer interest of the Federal Government in a natural gas service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government before the Federal Power Commission in a proceeding involving natural gas pipeline rates of the Cities Service Gas Co., FPC docket No. RP 69-39.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and further, shall be exercised in cooperation with the

responsible officers, officials, and employees thereof.

ROBERT L. KUNZIG,
Administrator of General Services.

JULY 8, 1969.

[P.R. Doc. 69-8311; Filed, July 14, 1969;
8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[37-65]

NORTHEAST UTILITIES ET AL.

Notice of Posteffective Amendment Regarding Proposed Change in Purchasing Functions of Subsidiary Service Company and Related Transactions

JULY 9, 1969.

In the matter of Northeast Utilities, 70 Federal Street, Boston, Mass. 02110; Northeast Utilities Service Co., the Hartford Electric Light Co., 176 Cumberland Avenue, Wethersfield, Conn. 06109; the Connecticut Light and Power Co., Selden Street, Berlin, Conn. 06037; Holyoke Water Power Co., 1 Canal Street, Holyoke, Mass. 01040; Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Mass. 01089.

Notice is hereby given that Northeast Utilities Service Co. ("NUSCO"), a wholly owned subsidiary service company of Northeast Utilities ("Northeast"), a registered holding company, and four of Northeast's electric utility subsidiary companies, the Connecticut Light and Power Co. ("CL&P"), the Hartford Electric Light Co. ("HELCO"), Holyoke Water Power Co. ("Holyoke"), and Western Massachusetts Electric Co. ("WMECO"), have filed with this Commission a posteffective amendment to the joint application-declaration in this matter pursuant to the provisions of the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act, and Rules 40(b), 42(b)(2), 50 (a)(1) and (a)(4), and 88 thereunder as applicable to the proposed transactions. All interested persons are referred to the said posteffective amendment, which is summarized below, for a complete statement of the proposed transactions.

NUSCO now purchases, as common agent for the accounts of CL&P, HELCO, Holyoke, and WMECO, all of the standard materials and supplies maintained in stock for such companies in the service company's central warehouse in Berlin, Conn. As a consequence, NUSCO is required to keep separate inventory and State sales and use tax records in respect of the merchandise which it handles for each of the four operating companies. Certain of such records overlap those

maintained by the operating companies. In order to simplify the multiplicity of tax accounting and other records necessitated by the present arrangement, applicants-declarants propose that the materials and supplies required for the four associate operating companies be purchased and inventoried by NUSCO for its own account as a wholesaler for subsequent resale and delivery to the associate companies upon their request.

The proposed change would necessitate procurement of additional capital from Northeast. By its order dated June 30, 1966 (Holding Company Act Release No. 15519), the Commission authorized NUSCO to issue and sell long-term unsecured notes ("old notes") to Northeast for cash, during a period of 5 years commencing with the effective date of such order, subject to the express limitations that (1) the aggregate principal amount of such notes to be at any one time outstanding would not exceed \$3 million and (2) the aggregate capital of NUSCO would at all times be maintained at an amount approximately equal to the sum of 2 months' operating expenses plus the cost of its property less applicable reserves, prepayments, and petty cash working funds.

NUSCO now proposes to issue and sell to Northeast for cash, and Northeast proposes to acquire, during the remainder of the aforesaid 5-year period, additional long-term unsecured notes ("new notes") having the same terms and provisions as the old notes. The company further proposes that the aforesaid limitations as to the principal amounts of notes to be issued and outstanding be modified so as to provide: (1) That not more than \$5 million aggregate principal amount of NUSCO's old and new notes may be at any one time outstanding; and (2) that the aggregate capital of NUSCO, including its outstanding notes and capital stock, will be maintained at all times at an amount approximately equal to the sum of 2 months' operating expenses, plus an amount necessary to finance the inventory of materials and supplies proposed to be purchased by NUSCO and stored in its central warehouse, plus the cost of NUSCO's property less applicable reserves, prepayments, and petty cash working funds.

The applicants-declarants represent that adoption of the proposed purchasing arrangements would have no effect on vendors' invoice prices now being paid by associate companies or the purchase and inventory records presently maintained by such companies. The new procedure would eliminate Connecticut sales taxes of approximately \$35,000 per year levied on merchandise purchased in Connecticut for redelivery and ultimate use in Massachusetts and result in estimated net annual savings of \$5,000 in the costs of recordkeeping and accounting functions presently performed by NUSCO.

The application-declaration further states that no fees or expenses will be incurred in connection with the proposed transactions, and that no consent or approval of any State commission or Federal commission, other than this Commission, is required in respect of the proposed transactions.

Notice is further given that any interested person may, not later than July 28, 1969, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended joint application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the said joint application-declaration, as amended by the said post-effective amendment or as it may be further amended, may be granted and permitted to become effective in the manner provided by Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 69-8283; Filed, July 14, 1969;
8:46 a.m.]

COMMERCIAL FINANCE CORPORATION OF NEW JERSEY

Order Suspending Trading

JULY 9, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Commercial Finance Corporation of New Jersey, a New Jersey corporation, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c) (5) of the Securities Exchange Act of 1934, that trading in such securities

otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period July 10, 1969, through July 19, 1969, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 69-8284; Filed, July 14, 1969;
8:46 a.m.]

[812-2524]

SELECTED SPECIAL SHARES, INC.

Sale of Shares by an Open-End Investment Company Not at the Public Offering Price

JULY 9, 1969.

Notice is hereby given that Selected Special Shares, Inc. ("Selected"), a Delaware corporation, 135 South La Salle Street, Chicago, Ill. 60603, registered as an open-end management investment company under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act, requesting an order of the Commission exempting from the provisions of section 22(d) of the Act a proposed transaction in which Selected's redeemable securities may be issued at a price other than the public offering price described in the prospectus, for substantially all of the assets of My-Ed Corp. ("My-Ed"). All interested persons are referred to the application on file with the Commission for a complete statement of the representations which are summarized below.

Selected represents that My-Ed, an Illinois corporation, has three stockholders and is, therefore, exempt from registration under the Act pursuant to section 3(c)(1) of the Act. At March 31, 1969, My-Ed's assets consisted of cash and securities having a value of \$2,631,910 and Selected had total assets of \$72,608,293. My-Ed is an investment counsel client of Security Supervisors Inc., the investment adviser of Selected.

By agreement and plan of reorganization dated April 22, 1969, My-Ed will transfer substantially all of its assets to Selected in exchange for shares of Selected stock. My-Ed will receive the number of shares of Selected calculated by dividing the value of My-Ed's assets by Selected's net asset value per share, subject to a reduction in the number of Selected shares to be exchanged if a greater percentage of My-Ed's assets is represented by unrealized appreciation than Selected's. It is expected that at the closing date the percentage of My-Ed's unrealized appreciation will not exceed that of Selected and that no adjustment will be required. If the transaction had been closed on or about March 31, 1969, My-Ed would have received approximately 148,369 shares of Selected, representing approximately 3.46 percent of Selected's total shares outstanding. The

net asset value of Selected's securities for the purposes of the exchange will be the net asset value next computed after the closing. The value of My-Ed's assets shall be determined in the same manner. Selected's public offering price is calculated by adding to its current net asset value a sales charge as described in its prospectus, and no sales charge will be added in this transaction.

Section 22(d) of the Act provides that registered investment companies issuing redeemable securities may sell their shares only at the current public offering price described in the prospectus. Section 6(c) permits the Commission, upon application, to exempt a transaction from the provisions of section 22(d) if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Selected represents that My-Ed's portfolio securities meet the investment objectives of Selected and represent desirable investments for Selected, that the terms of the transaction were arrived at through arm's length bargaining and that the terms of the transaction are fair and equitable.

Notice is further given that any interested person may, not later than July 30, 1969, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Selected at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 69-8285; Filed, July 14, 1969;
8:47 a.m.]

WATER RESOURCES COUNCIL

POLICIES AND PROCEDURES IN PLAN FORMULATION AND EVALUATION OF WATER AND RELATED LAND RESOURCES PROJECTS

Notice of Public Hearing

Notice is hereby given that the Water Resources Council will hold a public hearing commencing at 10 a.m. on August 22, 1969, at the Kentucky Hotel, Fifth and Walnut Streets, Louisville, Ky.

The purpose of this hearing is to obtain the views of the interested public on the policies and procedures used by the Federal agencies in the formulation and evaluation of plans for use and development of water and related land resources.

On June 13, 1969, the Water Resources Council published in the *FEDERAL REGISTER* (34 F.R. 9367-9368) a notice of public hearing and the availability of a special task force report, which was submitted to the Water Resources Council. The report is entitled "Procedures for Evaluation of Water and Related Land Resources Projects". The report sets forth a statement of the national objectives for water resources development. The objectives include national income, regional development, environmental enhancement, and well-being of people, and they provide the framework within which the effects of water and related land resources projects may be evaluated. Benefits and costs are identified as the beneficial or adverse effects of plans toward attainment of these national objectives. All effects of the water and related land resources plans are to be displayed in a system of accounts.

The notice in the *FEDERAL REGISTER* on June 13, 1969, announced a series of hearings to be held at various locations in the United States throughout the month of August 1969, and also hearings to be held in September 1969, in Washington, D.C. The detailed background for and the times and places of those hearings are set forth in that notice.

Since the publication of that notice, various persons have asked that another hearing be held somewhere in the vicinity of the Ohio River Valley. For that reason the hearing on August 22, 1969, in Louisville, Ky., has been added to the list of the places where hearings will be held.

At the hearings the Water Resources Council would like to obtain the views of all interested persons on (1) the report of the special task force, (2) Senate Document No. 97 and Supplement No. 1 thereto, dated June 4, 1964, and (3) any other matters that are relevant to policies and procedures to be used by Federal agencies in the formulation and evaluation of water and related land resources projects. After consideration of the views

and comments received, and of the results obtained in certain tests to be held on the procedures proposed in the report, the Council will formulate, in accordance with the Council's authority under the provisions of the Water Resources Planning Act (Public Law 89-80), principles, standards, and procedures to be observed by the Federal agencies in the formulation and evaluation of water and related land resources projects. These proposals will again be submitted to the public for review and comment before they are approved.

Copies of the report of the special task force, and of Senate Document No. 97 and Supplement No. 1 thereto, dated June 4, 1964, may be obtained by writing to the Water Resources Council, 1025 Vermont Avenue NW., Washington, D.C. 20005.

Views may be presented at the hearings in person or by submitting a written statement for the record. No advanced notice of intention to testify or to submit a written statement is necessary. The record will be kept open through September 19, 1969 for submission of further written statements not presented at the hearings. If necessary to accommodate all those wishing to testify, the hearing officer may limit each oral presentation to 30 minutes. Any person so limited shall have the privilege of submitting a written extension of his remarks, which will be incorporated in the record.

Written statements for the record not delivered to the hearing officer during the hearing should be addressed to Henry P. Caulfield, Jr., Executive Director, Water Resources Council, 1025 Vermont Avenue NW., Washington, D.C. 20005.

Dated: July 8, 1969.

HENRY P. CAULFIELD, JR.,
Executive Director.

[F.R. Doc. 69-8286; Filed, July 14, 1969;
8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 867]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 10, 1969.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340), published in the *FEDERAL REGISTER*, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the *FEDERAL REGISTER* publica-

tion, within 15 calendar days after the date of notice of the filing of the application is published in the *FEDERAL REGISTER*. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 3252 (Sub-No. 60 TA), filed July 2, 1969. Applicant: PAUL E. MERRILL, doing business as MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, Maine 04104. Applicant's representative: Francis E. Barret, Jr., 536 Granite Street, Braintree, Mass. 02184. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Caustic soda and sodium hypochlorite*, in bulk, in tank vehicles, from Orrington, Maine, to points in New Hampshire, Massachusetts, Rhode Island and ports of entry in the United States and Canada international boundary line at or near Calais, Vanceboro, and Houlton, Maine, for 180 days. Supporting shipper: IMC Chlor-Alkali, Inc., 5401 Old Orchard Road, Skokie, Ill. 60076. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 307, 76 Pearl Street, Portland, Maine 04112.

No. MC 25798 (Sub-No. 194 TA), filed July 7, 1969. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Auburndale, Fla. 33823. Applicant's representative: Tony G. Russell (same address as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Bananas, plantains, pineapples, and coconuts*, from Wilmington, Del., to points in Indiana, Illinois, Iowa, Wisconsin, Minnesota, Missouri, Kansas, Nebraska, North Dakota, South Dakota, Arkansas, Michigan, Ohio, and Oklahoma, for 180 days. Supporting shipper: West Indies Fruit Co., Post Office Box 1940, Miami, Fla. 33101. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 57275 (Sub-No. 12 TA), filed July 1, 1969. Applicant: SCHADE REFRIGERATED LINES, 429 West Jackson, Phoenix, Ariz. 95003. Applicant's representative: Richard Minne, Luhrs Building, Phoenix, Ariz. 85003. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes,

transporting: *Confectionery and chocolate products*, in mechanically controlled refrigerated vehicles, between Phoenix, Ariz., and points in that part of Arizona beginning at junction Bell Road and U.S. Highways 60-70-89, thence last to Lake Pleasant Road, thence north along Lake Pleasant Road to junction Carefree Highway, thence east along Carefree Highway to junction Cave-Creek Road, thence north to town of Cave Creek and east to Carefree to junction Scottsdale Road, thence south along Scottsdale Road to junction Pinnacle Peak Road, thence east along Pinnacle Peak Road to junction unnumbered county road, thence south along unnumbered county road past Fort McDowell to junction Arizona Highway 87, thence east along Arizona Highway 87 to junction Stewart Mountain Dam Road, thence south along Stewart Mountain Dam Road past Stewart Mountain Dam to junction Old Bush Highway, thence southwesterly along Old Bush Highway to junction Ellsworth Road, thence south along Ellsworth Road to junction Hunt Highway near Maricopa County line, thence west and south along Hunt Highway to junction Arizona Highway 87, thence south-easterly along Arizona Highway 87 to Sacaton turnoff, thence along unnumbered highway to the town of Sacaton, thence westerly along Sacaton Road to junction Arizona Highway 93, thence north along Arizona Highway 93 to junction Bapchule Road, thence west along Bapchule Road to junction Maricopa Road, thence north along Maricopa Road to junction Komatka Road, thence west along Komatka Road to St. Johns, thence north along Avenue 51 to Broadway (Future interstate freeway), thence west along Broadway to 115th Avenue, thence north along 115th Avenue to junction U.S. Highway 80, thence along U.S. Highway 80 to Buckeye, Ariz., thence north along Cemetery Road to Broadway, thence east along Broadway to Cotton Lane, thence north along Cotton Lane to junction Beardsley Road, thence east along Beardsley Road to junction U.S. Highway 60-70, thence south along U.S. Highway 60-70 to point of beginning at Bell Road, service is authorized at points on the boundary roads and highways and off-route service to Caterpillar Proving Grounds approximately 4 miles west of Cotton Lane near Indian School Road, for 180 days. **NOTE:** Applicant states it will, if requested, interline with carriers who participate in Rocky Mountain Motor Tariff Bureau Tariff IG to further the transportation of the designated commodities within the subject area. In its past operations under its previous registration, applicant has continued such an interline operation although there has been a very slight movement of traffic. Supporting shippers: Curtis Candy Co., Division of Standard Brands, Inc., Franklin Park, Ill.; E. J. Brach & Sons, Chicago, Ill.; Chicago Candy Association, Chicago, Ill. Send protests to: Andrew V.

Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Building, Phoenix, Ariz. 85025.

No. MC 60012 (Sub-No. 82 TA), filed June 25, 1969. Applicant: RIO GRANDE MOTOR WAY, INC., 1400 West 52nd Avenue, Denver, Colo. 80216. Applicant's representative: Warren D. Braucher, Post Office Box 5482, Denver, Colo. 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except commodities of unusual value, household goods as defined by the Commission, and those injurious or contaminating to other lading, (1) between Antonito, Colo., and the Colorado-New Mexico state line, from Antonito, over Colorado Highway 17 to the Colorado-New Mexico state line, and return over the same route, serving all intermediate points, and serving the off-route points in that part of Conejos and Rio Grande Counties, Colo., located south of U.S. Highway 160 and west of U.S. Highway 285; (2) between Antonito, Colo., and Chama, N. Mex., from Antonito, over U.S. Highway 285 to Tres Piedras, N. Mex., thence over U.S. Highway 64 to Tierra Amarilla, N. Mex., thence over U.S. Highway 84 to its junction with New Mexico Highway 17 (approximately 4 miles east of Monero, N. Mex.), and thence over New Mexico Highway 17 to Chama, N. Mex., and return over the same routes, serving all intermediate points and serving the off-route points of No Agua, N. Mex. (approximately 7 miles north of Tres Piedras); the plant-site of Johns-Manville Corp. located approximately 1½ miles east of No Agua; and the plant-site of the United Perlite Corp., located approximately 16 miles east of No Agua, for 180 days. **NOTE:** Applicant intends to interline at Salt Lake City, Utah, and Denver, Colo., and to tack with present authority in MC 60012 and Subs 28, 29, 30, 32, 38, 58, and 70. Supporting shippers: Mr. Ellwood H. Spencer, General Traffic Manager, Grefco, Inc., 1520 Locust Street, Philadelphia, Pa. 19102; Contract Engineering Co., Platoro Project, Platoro Mail, Monte Vista, Colo. 81144; Johns-Manville Perlite Corp., Post Office Box 338, Antonito, Colo. 81120; United Perlite Corp., Post Office Box 367, Antonito, Colo. 81120; The Cleveland-Cliffs Iron Co., Post Office Box 1211, Rifle, Colo. 81650. Send protests to: Charles W. Buckner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1961 Stout Street, Denver, Colo. 80202.

No. MC 83539 (Sub-No. 257 TA), filed July 2, 1969. Applicant: C & H TRANSPORTATION CO., INC., Post Office Box 5976, Dallas, Tex. 75222. Applicant's representative: J. P. Welsh (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft ground support units and aircraft*

cargo and passenger handling equipment and machinery, attachments, parts and accessories used in connection therewith, from Houston, Tex., to points in the United States (except Hawaii and Texas), for 180 days. **NOTE:** Applicant does not intend to tack with existing authority. Supporting shipper: Stewart & Stevenson, Post Office Box 1637, Houston, Tex. 77001. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 103993 (Sub-No. 433 TA), filed July 7, 1969. Applicant: MORGAN DRIVE AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Ralph H. Miller (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Truck campers and camp coaches*, from Virginia Beach, Va., to points in the United States east of the Mississippi River, for 180 days. Supporting shipper: Virginian Coach Camper Corp., Virginia Beach, Va. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 114848 (Sub-No. 47 TA), filed July 2, 1969. Applicant: WHARTON TRANSPORT CORPORATION, 1498 Channel Avenue, Memphis, Tenn. 38106. Applicant's representative: James N. Clay III, 2700 Sterick Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain and grain products*, from West Memphis, Ark., to points in Mississippi, Tennessee, Alabama, Kentucky, and Georgia, for 180 days. Supporting shippers: Burrus Mills, Inc., 330 Mercantile Securities Building, Post Office Box 448, Dallas, Tex. 75221 (Mr. Gayle Johnson, General Traffic Manager); and Flour Mills of America, Inc., Post Office Box 2568, Kansas City, Mo. 64142 (Mr. A. W. Schroeder, Traffic Manager). Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 390 Federal Office Building, Memphis, Tenn. 38103.

No. MC 117673 (Sub-No. 2 TA), filed July 3, 1969. Applicant: THE BIG E CORP., 505 North Myrtle Avenue, Jacksonville, Fla. 32204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, including plantains, and agricultural commodities otherwise exempt from economic regulations under section 203(b) (6) of the Act when transported in mixed shipments with bananas or plantains*, from Wilmington, Del., to points in Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Pennsylvania, District of Columbia, New Jersey, New York, Ohio, Tennessee, Kentucky, Indiana,

Illinois, Wisconsin, Missouri, Michigan, and Alabama, for 180 days. **NOTE:** Applicant intends to tack with its existing authority, but no interlining. Supporting shipper: West Indies Fruit Co., Post Office Box 1940, Miami, Fla. 33101. Send protests to: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 124170 (Sub-No. 16 TA), filed July 2, 1969. Applicant: FROSTWAYS, INC., 2450 Scotten Street, Detroit, Mich. 48209. Applicant's representative: Walter Bienenman, Suite 1700, 1 Woodward Avenue, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, plantains, pineapples, and coconuts and agricultural commodities otherwise exempt, from economic regulations under section 203 (b) of the Act when transported in mixed shipments with bananas, plantains, pineapples, and coconuts, from Wilmington, Del., to points in Kentucky, Indiana, Ohio, Michigan, Illinois, and Pennsylvania, for 180 days.* Supporting shipper: West Indies Fruit Co., Post Office Box 1940, Miami, Fla. 33101. Send protests to: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower Building, 10 Witherell Street, Detroit, Mich. 48226.

No. MC 124181 (Sub-No. 11 TA), filed July 2, 1969. Applicant: JOSEPH GENOVA, Clayton Road, Williamstown, N.J. 08094. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Containers, ends, caps and covers, from Morrisville (Bucks County), Pa., to Williamstown and Glassboro, N.J., under contract with Violet Packing Co., National Fruit Product Co., Inc., and Ron-Son Mushroom Product Co., Inc., for 150 days.* Supporting shippers: Violet Packing Co., 123 Railroad Avenue, Williamstown, N.J., 08094; National Fruit Product Co., Inc., Glassboro, N.J. 08028; Ron-Son Mushroom Products, Inc., Ellis Street and Deptford Road, Glassboro, N.J. 08028. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 410 Post Office Building, Trenton, N.J. 08608.

No. MC 127042 (Sub-No. 41 TA), filed July 7, 1969. Applicant: HAGEN, INC., 4120 Floyd Boulevard, Post Office Box 6, Leeds Station, Sioux City, Iowa 51108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Milk, cream and vegetable oil compounds, dessert topping, and coffee whitener, from points in the Kansas City, Mo., commercial zone to points in Illinois, Iowa, Minnesota, Nebraska, South Dakota, and Wis-*

consin, for 180 days. Supporting shipper: Presto Food Products, Inc., 1101 East 16th Street, Kansas City, Mo. 64108. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 304 Post Office Building, Sioux City, Iowa 51101.

No. MC 127902 (Sub-No. 1 TA), filed July 2, 1969. Applicant: M. L. DIETZ, doing business as DIETZ MOTOR LINES, Post Office Box 757, Hickory, N.C. 28601. Applicant's representative: Charles E. Ephraim, 1411 K Street NW, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, from points in Buncombe, Caldwell, Burke, Catawba, Rutherford, McDowell, Alexander, and Iredell Counties, N.C., to points in Alabama, Mississippi, Louisiana, and Arkansas (except from Hickory and Conover, N.C., to points in Alabama), for 150 days.* Supporting shippers: Caldwell Furniture Co., Lenoir, N.C. 28645; Hickory Manufacturing Co., Box 998, Hickory, N.C. 28601; Fairfield Chair Co., Lenoir, N.C. 28645; Bernhardt Industries, Lenoir, N.C. 28645; Consolidated Furniture Industries, Inc., Lenoir, N.C. 28645; Broyhill Furniture Industries, Lenoir, N.C. 28645; Comfort Chair Co., Inc., Post Office Drawer 2227, Hickory, N.C. 28601; DeVille Furniture Co., Post Office Box 2246, Hickory, N.C. 28601; Drexel Furniture Co., Drexel, N.C. 28619. Send protests to: Jack K. Huff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 316 East Morehead, Suite 417 (BSR Building), Charlotte, N.C. 28202.

No. MC 133771 (Sub-No. 1 TA), filed July 3, 1969. Applicant: JACK STEWART, doing business as JACK STEWART PRODUCE COMPANY, Box 605, Idabel, Okla. 74745. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Clay pots, for the account of Marshall Pottery, Inc., from Marshall, Tex., to Los Angeles, Salinas, Hayward, San Jose, and Smith River, Calif., Walla Walla, Wash., and Stayton, Oreg., for 150 days.* Supporting shipper: Richard Ellis, vice president, Marshall Pottery, Inc., Marshall, Tex. 75670. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 240 Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 133774 (Sub-No. 1 TA), filed July 2, 1969. Applicant: HARRY R. OLOFFSON AND HAROLD F. OLOFFSON, a partnership, doing business as OLOFFSON TRUCKING SERVICE, Manlius, Ill. Applicant's representative: Samuel G. Harrod, 106 East Center Street, Eureka, Ill. 61530. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gravity flow farm boxes and related parts and running gears, restricted to transportation performed by*

vehicles equipped with booms or hoists for loading and unloading, from Manlius, Ill., to points in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin, for 180 days. Supporting shipper: Smith and Co. (Division of Burlington and Associates, Inc.), Manlius, Ill. 61338. Send protests to: District Supervisor Raymond E. Mauk, Interstate Commerce Commission, Bureau of Operations, U.S. Court House, FOB Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

By the Commission.

[SEAL] ANDREW ANTHONY, Jr.,
Acting Secretary.

[F.R. Doc. 69-8303; Filed, July 14, 1969;
8:48 a.m.]

[Notice 376-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 10, 1969.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-71104 (Republication). By order of June 30, 1969, the Motor Carrier Board, supplemented the order of the Commission, Motor Carrier Board, entered February 24, 1969, to authorize transfer of Certificate No. MC-82841 and sub numbers thereunder to Hunt Transportation, Inc., Omaha, Nebr., from R. D. Transfer, Inc., Omaha, Nebr., to authorize the transfer of the additional operating rights contained in Certificate No. MC-82841 (Sub-No. 43), issued to transferor March 24, 1969, authorizing the transportation of: Paper and paper articles from Omaha and Nebraska City, Nebr., and Sioux City, Iowa, to points in Colorado, Iowa, Kansas, Minnesota, Missouri, South Dakota, and a specified portion of Nebraska. Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102, attorney for applicants.

No. MC-FC-71446. By order of June 30, 1969, the Motor Carrier Board approved the transfer to Leman Knight, doing business as Pete Knight Trucking Co., Detroit, Ala., of the operating rights

in Permit No. MC-127726 issued on August 19, 1966, to Lawrence Ray Palmer and Lawrence Richard Palmer, a partnership, doing business as Palmer Machine Works, Amory, Miss., authorizing the transportation of: Fertilizer and fertilizer materials, dry, in bulk or in packages, between Florence, Ala., and points in Mississippi; fertilizer and fertilizer materials, dry, in bulk in dump vehicles, and in packages, between Tupelo, Miss., and Florence, Ala. Rubel L. Phillips, Post Office Box 22628, Jackson, Miss. 39205, attorney for transferee.

No. MC-FC-71313. By order of June 30, 1969, the Motor Carrier Board approved the transfer to Stewart Doyle, Inc., doing business as Doyle Transit Co., Fargo, N. Dak., of certificates in Nos. MC-125726 and MC-125726 (Sub-No. 1), issued January 8, 1965, and July 19, 1965, respectively, to Northern Transit Co., a corporation, of: Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, between Fargo, N. Dak., and Oakes, N. Dak., serving all intermediate points; and, between Oakes, N. Dak., and Ellendale, N. Dak., serving all intermediate points. C. J. Serkland, 216 First National Bank Building, Fargo, N. Dak. 58102, attorney for applicants.

No. MC-FC-71447. By order of June 30, 1969, the Motor Carrier Board approved the transfer to Jordan Bus Co., Inc., 3201 Northwest 63d Street, Oklahoma City, Okla., of the certificates in Nos. MC-28680, MC-28680 (Sub-No. 5), MC-28680 (Sub-No. 8), MC-28680 (Sub-No. 9), MC-28680 (Sub-No. 12), MC-28680 (Sub-No. 15), MC-28680 (Sub-No. 16), MC-28680 (Sub-No. 17), and MC-28680 (Sub-No. 20), issued October 25, 1957, June 17, 1952, October 9, 1956, October 4, 1957, April 24, 1958, August 22, 1958, April 3, 1958, April 7, 1963, and March 30, 1959, respectively, to Jordan Bus Co., a corporation, 1232 United Founders Tower, Oklahoma City, Okla., authorizing the transportation of passengers and their baggage, and express and newspapers over regular routes between specified points in Oklahoma, Arkansas, and Texas.

No. MC-FC-71463. By order of June 30, 1969, the Motor Carrier Board approved the transfer to Ensminger Motor Lines, Inc., Frankfort, Ill., of certificate No. MC-129744 issued February 10, 1969, to Kenneth Ensminger, doing business as Ensminger Motor Lines, Frankfort, Ill., authorizing the transportation of plastic products, except in bulk, from Frankfort, Ill., to points in Wisconsin (except Green Bay, Wis., and points in its commercial zone as defined by the Commis-

sion), Michigan (except Cheboygan and points in its commercial zone as defined by the Commission), Indiana, and Ohio. Robert H. Levy, 29 South La Salle Street, Chicago, Ill. 60603, attorney for applicants.

[SEAL] ANDREW ANTHONY, Jr.,
Acting Secretary.

[P.R. Doc. 69-8305; Filed, July 14, 1969;
8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 59]

SEABOARD COAST LINE RAILROAD CO. ET AL.

Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

It is ordered, That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Seaboard Coast Line Railroad Co. shall deliver to the St. Louis-San Francisco Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exceptions: Canadian ownerships.

(b) The St. Louis-San Francisco Railway Co. shall deliver to the Chicago, Burlington & Quincy Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exceptions: Canadian ownerships.

It is further ordered, That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

It is further ordered, That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(c) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler on or before each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(d) The carriers receiving the cars described above must advise Agent R. D. Pfahler on or before each Wednesday as to the number of cars received during

the preceding week, ending each Sunday at 11:59 p.m.

(2) *Regulations suspended.* The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) *Effective date.* This direction shall become effective at 12:01 a.m., July 10, 1969.

(4) *Expiration date.* This direction shall expire at 11:59 p.m., July 27, 1969, unless otherwise modified, changed, or suspended by order of this Commission.

It is further ordered, That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 9, 1969.

INTERSTATE COMMERCE
COMMISSION,
R. D. PFAHLER,
Agent.

[SEAL] [P.R. Doc. 69-8306; Filed, July 14, 1969;
8:48 a.m.]

[S.O. 1002; Car Distribution Direction No.
57-A]

SEABOARD COAST LINE RAILROAD CO., ET AL.

Car Distribution

Upon further consideration of Car Distribution Direction No. 57, and good cause appearing therefor:

It is ordered, That:

Car Distribution Direction No. 57 be, and it is hereby vacated.

It is further ordered, That this order shall become effective at 11 a.m., July 9, 1969, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 9, 1969.

INTERSTATE COMMERCE
COMMISSION,
R. D. PFAHLER,
Agent.

[SEAL] [P.R. Doc. 69-8307; Filed, July 14, 1969;
8:48 a.m.]

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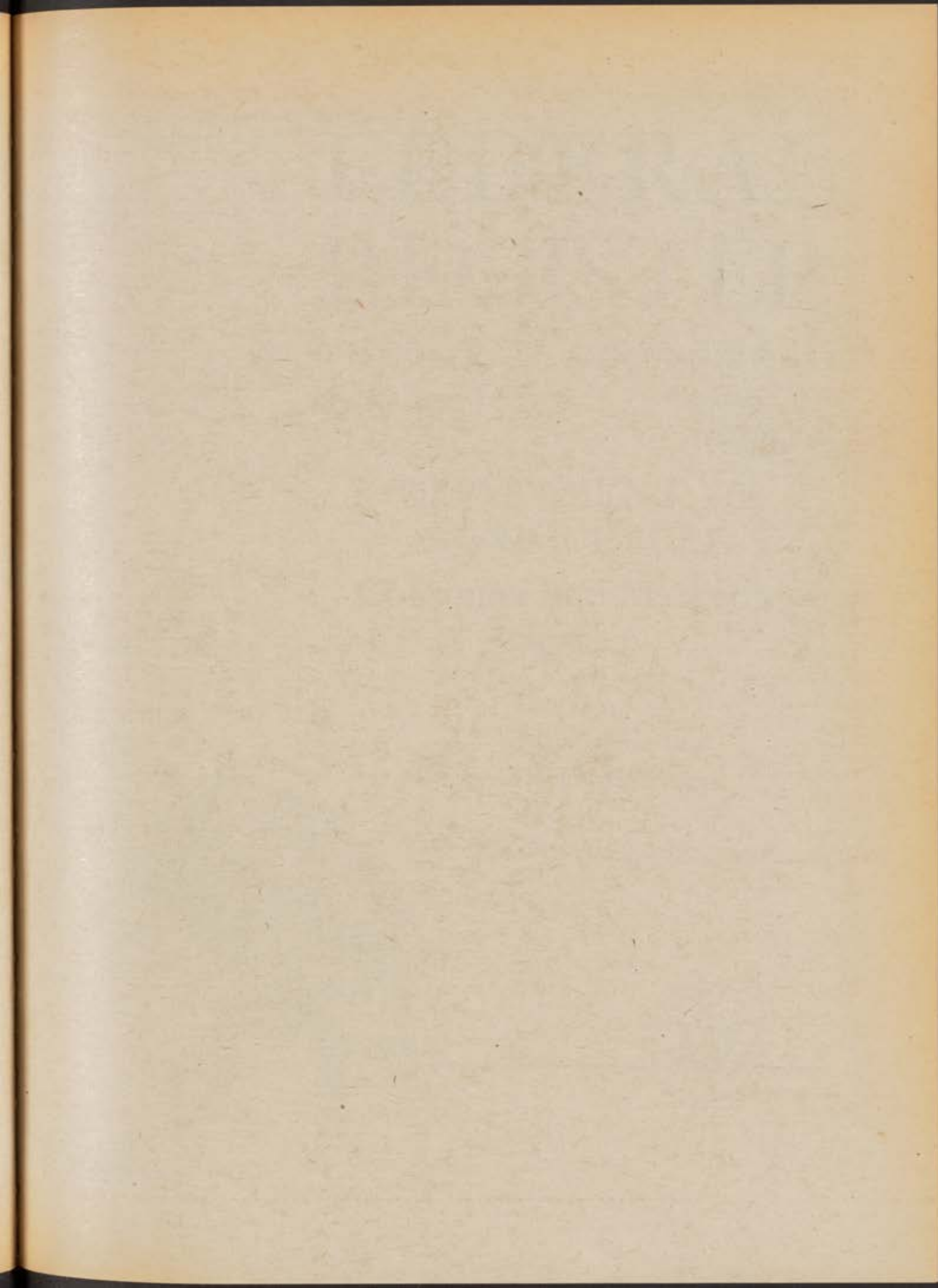
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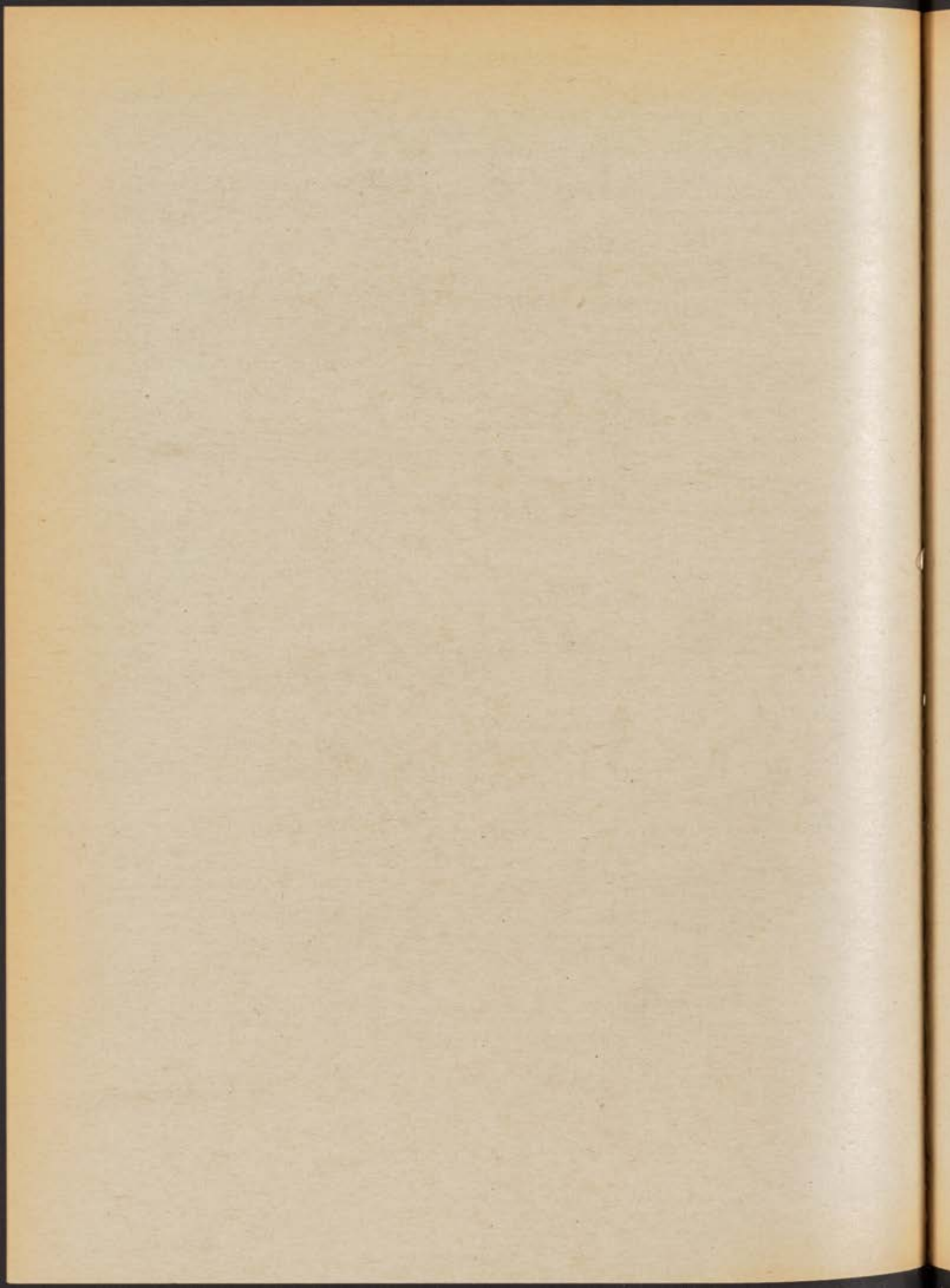
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PART II

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

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Milk in Certain Marketing Areas

Recommended Decision



DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1131]

[Docket Nos. AO-271-A12, AO-271-A12-RO2]

MILK IN CENTRAL ARIZONA
MARKETING AREA

Notice of Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Central Arizona marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Phoenix, Ariz., during the period February 7-10, 1967, pursuant to notices thereof which were issued on December 14, 1966 (31 F.R. 16277), January 4, 1967 (32 F.R. 140), and January 12, 1967 (32 F.R. 415).

The material issues on the record of the hearing relate to:

1. Marketing area extension.
2. Producer definition.
3. Producer-handler definition.
4. Classification provisions.
5. Transfer provisions.
6. Location differential at Tucson.
7. Obligation of a handler operating a partially regulated distributing plant.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Regulatory Programs, on October 9, 1967 (32 F.R. 14232, F.R. Doc. 67-12143), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Exceptions were filed by a number of interested parties.

This proceeding was reopened at a public hearing held at Memphis, Tenn.,

under Docket No. AO-217-A12-RO2, among others, beginning February 19, 1968, pursuant to notice thereof which was issued February 6, 1968 (33 F.R. 2785). At the reopened hearing, issues (3), (4), and (7) were considered with respect to the disposition of filled milk products in the marketing area.

This decision sets forth in detail the findings and conclusions and proposed order findings and conclusions on issues (3), (4) and pertinent parts of (7). It also incorporates herein all the findings and conclusions and proposed order provisions relating to issues (1), (2), (5), (6), and that part of (7) which relates to the obligation of a partially regulated distributing plant disposing of fluid milk in the marketing area, as set forth in the prior decision.

Interested parties may submit exceptions on all the issues of this proceeding which were considered at the hearing and the reopened hearing.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Marketing area extension.* The proposals to include the southern part of Mohave County and the northern part of Yuma County in the marketing area are denied.

The cooperative association serving the market proposed that the marketing area be extended to include the southern part of Mohave County (south of the Colorado River) and the northern part of Yuma County. The southern part of Yuma County is now included in the marketing area.

At the present time there is no distribution in the northern part of Yuma County by handlers regulated under the order. All of the milk sold there is distributed by two unregulated handlers. The milk moves into the area from Blythe, Calif. In Mohave County, regulated handlers dispose of approximately 70 percent of the Class I sales. This is approximately 1.5 percent of the total Class I sales of regulated handlers. The remainder of the Class I sales in Mohave County south of the Colorado River are made by a distributor located in Needles, Calif.

The northern part of Yuma County is separated from the marketing area by desert. There is only one north-south highway across the county and it is in the extreme western part of the county close to the California border. At the time of the hearing, there were no highways or bridges across the Bill Williams River which forms the boundary between Yuma and Mohave Counties.

Proponent stated that a new highway-bridge complex across the Bill Williams River was under construction and that upon its completion it would be practicable for regulated handlers to dispose of milk in northern Yuma County. If this area were added to the marketing area and a compensatory payment were assessed on the California milk, regulated handlers might expect to expand their

sales very substantially in the two-county area.

Proponents contended that California handlers had a decided buying advantage over regulated handlers in that the California Milk Stabilization Regulation did not apply to milk sold outside the State of California. They alleged that such milk was purchased at the Class III price and that this lower cost of acquiring milk was a cause of market instability.

The record clearly established that California regulations do not apply to sales to military installations regardless of their location. There are apparently no military installations in the areas under consideration. Hence competition for sales to military bases is not involved here.

With respect to sales to other than military installations, however, the evidence does not bear out the contention of proponents. The figures presented by proponents on prices received by California producers do not establish that milk is being purchased by California handlers for sale in Arizona at the Class III price.

On the other hand witnesses for handlers who operate plants in California testified that the State of California does in fact establish the prices which handlers must pay for such milk. They referred specifically to section 4283 of the Agricultural Code of California and to the provisions of the Stabilization and Marketing Plan for the Southern Metropolitan Area (Los Angeles, Orange, San Bernardino, and Riverside Counties), issued under the authority of the above code. Blythe is located in Riverside County and Needles is in San Bernardino County.

The record does not establish that there is a significant difference in the cost to Arizona and California handlers of milk acquired for fluid disposition to nonmilitary outlets in Arizona. Hence, at this time the record evidence does not reveal disorderly marketing conditions which affect regulated handlers in the proposed area.

It is concluded, therefore, that the northern part of Yuma County and Mohave County should not be added to the marketing area. In Yuma County regulated handlers sell no milk and the proposal for regulation is based on handlers' expectations of acquiring some business there after the completion of a new bridge over the Bill Williams River. In the case of Mohave County where regulated handlers do sell some milk, the county, in view of the decision to omit Yuma County, would not be contiguous to the remainder of the marketing area. Moreover, the volume of milk distributed there by Central Arizona handlers is a very small percentage of the total Class I sales of regulated handlers.

A handler proposed that a lower Class I price apply in Yuma and Mohave Counties if the marketing area were not extended. The appropriate level of Class I milk price for a marketing area is influenced by the Class I sales which regulated handlers make outside the marketing area. These sales affect the volume of milk covered by an order.

If the Class I price were higher for milk sold inside than outside the marketing area, returns for Class I disposition inside the area would bear the greater burden of providing the incentive for milk production for both. To the extent that a higher Class I price inside the marketing area is reflected in higher prices to consumers inside the area said consumers would be subsidizing consumers outside the marketing area where lower prices prevailed.

There is no basis when establishing the appropriate Class I milk price for a market to distinguish between milk sold inside and milk sold outside the marketing area. The milk sold outside the area by regulated handlers is produced under the same conditions as milk sold in the marketing area and is processed in the same plants. Thus, the milk moving through the regulated handlers' plants, whether it is sold inside or outside the marketing area is part of the same supply and demand considerations upon which the determination concerning the appropriate Class I price level must be made.

Neither is it intended that Federal milk regulation be susceptible of manipulation to permit the use of adjacent outside markets as a dumping ground for milk in excess of a market's needs. A lower Class I price for milk sold in the other area could have a lowering effect on the price paid farmers by unregulated distributors in that area, and would tend to lower returns to dairy farmers supplying the unregulated handlers. For the above reasons, it is concluded that an out-of-area Class I price should not be adopted, and the proposal, therefore, is denied.

2. Producer definition. The order should provide for the receipt of milk at a pool plant by diversion from an other order plant without designating the dairy farmers who shipped it as producers under the Central Arizona order. The cooperative association supplying milk to Central Arizona regulated handlers also supplies milk to two handlers regulated by the Rio Grande Valley order on a 5-day-week basis. During the remainder of the week, some of this milk is manufactured at the association's plant which is regulated by the Central Arizona order.

The milk supplied to the Rio Grande Valley handlers was developed for and is, in large part, committed to the Rio Grande Valley area. Under present order provisions, however, when the milk is diverted from the Rio Grande Valley pool plants and received at a pool plant under the Central Arizona order, the dairy farmers involved are designated as producers under the Central Arizona order, and the milk is accounted for as producer milk. Since the milk is not needed for fluid use in the Central Arizona area, it is converted into manufactured dairy products. This tends to lower the uniform price to producers regularly supplying the Central Arizona market.

In other instances, milk regularly marketed by the cooperative association in the Rio Grande Valley area is trans-

ferred to a manufacturing plant about 700 miles from El Paso, Tex., when not needed for Class I use under that order. Under the proposed order change, such milk could be diverted about 400 miles for manufacture at a pool plant regulated by the Central Arizona order without lowering the uniform prices of the producers regularly supplying the market. This would also result in a considerable saving in transportation costs to the association in supplying the Rio Grande Valley market.

The proposal will encourage greater marketing efficiencies and can be implemented by providing in the "producer" definition that the term shall not include a person with respect to milk diverted to a pool plant from an other order plant if such person retains producer status under the other order and if the operators of both the diverting plant and the plant to which the milk is diverted have requested Class III classification in their reports of receipts and utilization filed with the market administrators of the respective orders.

3. Producer-handler definition. Producer-handlers should continue to be exempt from the pooling and pricing provisions of the order. However, the producer-handler definition should be amended to prohibit the reconstitution or recombining of fluid milk products and filled milk from concentrated nonfat milk solids such as nonfat dry milk. Also, provision should be made to add to the definition a further limitation on the quantity of fluid milk products (including filled milk) that a producer-handler may receive from pool plants if he is to retain exemption from pricing and pooling milk of his own production under the order.

A hearing on amendments to the Central Arizona order considered, among other issues, the distribution of filled milk by producer-handlers. It was held at Phoenix, Ariz., during the period February 7-10, 1967, and a recommended decision was issued by the Acting Deputy Administrator, Regulatory Programs, on October 9, 1967 (32 F.R. 14232). Exceptions to the recommended decision were filed by interested parties.

A general hearing at Memphis, Tenn., which began on February 19, 1968, also considered this issue, and for the Central Arizona market, represented a reopening of the February 1967 hearing. The evidence submitted at the Memphis hearing, together with the exceptions to the 1967 recommended decision are considered in this decision.

The order now provides essentially that a person who is a dairy farmer and who processes in his own plant and distributes in the marketing area milk of his own production may be defined as a producer-handler. As such, he is accorded exemption from all payment obligations normally applicable to handlers fully regulated under the order. Recognizing that circumstances might arise where a producer-handler's production might temporarily fall below his sales requirement, the order provides that such a person may buy supplemental milk from pool plants in an amount representing not

more than 5 percent of his Class I utilization for the month without losing his producer-handler status. No limit was placed on the volume of nonfluid other source products which a producer-handler could purchase. However, it was not contemplated that the producer-handler, typically a family type farm operation, would recombine or reconstitute nonfat dry milk solids into substantial quantities of fluid products.

Under the present provisions of the order, producer-handlers can buy nonfluid, other source milk from any source and reconstitute it into a full range of fluid milk products such as buttermilk and milk drinks. More specifically, some producer-handlers have reconstituted nonfat dry milk and have made filled milk by recombining the fluid skim milk with added ingredients such as vegetable fat, and vitamins. When they do this they obtain an undue pricing advantage compared to regulated handlers. Other handlers incur financial obligations to the pool on unregulated milk used in identical or similar fluid milk products, but producer-handlers are exempt from pooling and incur no obligation to the pool. This financial advantage accruing to producer-handlers under the present terms of the order was not contemplated when the producer-handler exemption was provided. A person who reconstitutes substantial quantities of fluid milk products including filled milk cannot be considered to be disposing of milk of his own farm production and hence should not enjoy the exempt status afforded a farmer who bottles and distributes essentially only milk of his own production.

At the Phoenix hearing, a witness for a producer-handler proposed that a tolerance factor of 25 percent is needed to cover emergencies and the seasonality of production and Class I sales. In this connection, a 1962 decision (27 F.R. 3923), official notice of which is hereby taken, stated that producer handlers must provide for their own seasonal reserves. The 5-percent tolerance now provided is for emergency situations. Moreover, the evidence in this proceeding is that the 5-percent tolerance now provided has been fully adequate.

Accommodating the purchase of milk and milk products (including nonfat dry milk) from pool plants, as proposed by the witness, would not further marketing stability, because it would shift a further burden of surplus to other producers supplying the market to the extent of the reserves otherwise needed by producer handlers. The proposal, therefore, is denied.

The 5-percent tolerance factor now provided under the order applies only to purchases of supplemental bulk milk by producer-handlers from pool plants. It should also include packaged milk products which producer-handlers acquire from pool plant or other order plants for resale as Class I either with or without further processing. Such products would include items such as flavored milk and buttermilk. The 5-percent tolerance factor should also include filled milk, whether made from

fluid skim or from reconstituted nonfat dry milk. To implement this, the order should specify that the 5-percent tolerance applies to fluid milk products purchased from pool or other order plants. Filled milk is included in the fluid milk products definition contained herein.

As under the present order, a producer-handler should not be precluded from buying from any source manufactured dairy products such as butter and cheese, which are in a form such that they cannot be reconstituted into fluid milk products. Likewise, the order should continue to provide that such person may not purchase fluid milk products from other dairy farmers or from a nonpool plant without losing his exemption under the order. This may be accomplished by providing that fluid milk products received at the plant of a producer-handler or acquired for route disposition may be derived only from own farm production and fluid milk products transferred from pool plants or other order plants subject to the aforesaid limitations. Also, producer-handlers may not reprocess or convert nonfluid milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk products so received.

A witness for some of the producer-handlers operating in the Central Arizona area testified that the 5,000-pound limit on supplemental milk purchases, as proposed by the cooperative association, would effectively eliminate from exemption at least two producer-handlers. This would result because their supplemental purchases of nonfat dry milk which is reconstituted and combined with vegetable fat and other ingredients greatly exceed that amount. He argued that Federal milk orders generally allow "adequate" purchases of supplemental milk from pool plants. Actually, there is no significant difference between the Central Arizona order and other orders in this regard, including the proposed volume limit of 5,000 pounds.

In exceptions, some of the producer-handlers objected strenuously to the limitations proposed by the cooperative association and recommended by the Department. Specifically, they objected to the 5,000-pound limit proposed for receipts from pool plants, reiterating that the provision would eliminate their exemption as producer-handlers.

Nevertheless, it is appropriate that a limit be placed on the amount of milk that a producer-handler may receive from pool plants if he is to retain exemption from pricing and pooling of his own production. If producer-handlers could rely on substantial pool supplies to supplement their own production, they would be able to keep all of their own production for Class I use without assuming the burden of their own surplus. The producer-handler maintains control of his milk from its source at the farm until its ultimate disposition. He is, therefore, in position to keep his farm production closely in line with the needs of his fluid milk business. He should assume the burden of maintaining what-

ever reserve supply of milk is necessary for his fluid operations.

There was no significant controversy over the present provision that a producer-handler's receipts from pool plants be limited to 5 percent of his fluid milk product disposition. There was, however, substantial protest with respect to the provision that such receipts not exceed 5,000 pounds monthly. The exceptions are producer-handlers of relatively large production. They should be expected to rely on their own production for reserve supplies. However, an occasional purchase of a small quantity from pool plants should be permitted to cover possible emergencies.

Producer-handlers are purchasing supplemental milk from pool plants within the limits now prescribed by the order. In fact, a witness for two producer-handlers with the largest volumes testified that they contemplate no need to increase supplemental purchases of bulk milk from pool plants. The additional provision that such purchases shall not exceed 5,000 pounds per month is necessary to insure that producer-handlers do not obtain an undue price advantage compared to regulated handlers in the use of nonfat dry milk reconstituted into fluid milk products.

It is concluded that a volume limitation of 5,000 pounds should apply whenever 5 percent of a producer-handler's fluid milk product disposition exceeds that figure. Accordingly, under the producer-handler definition provided herein, a producer-handler's total disposition of fluid milk products may not exceed his own farm production, plus fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less; plus the skim milk equivalent of nonfat milk solids used to increase the total solids content of fluid milk products.

4. *Classification provisions.* The findings and conclusions pertaining to the classification and pricing of filled milk, which resulted from evidence introduced at the Memphis hearing, are hereby adopted as the findings and conclusions of this decision.

At the Phoenix hearing, the cooperative association, which represents a majority of the producers on the market, proposed that the order be amended to provide that any milk product not specifically designated as Class II milk or as Class III milk be automatically classified as Class I milk. The main purpose of this proposal was to make certain that fluid milk products made from skim milk or from reconstituted nonfat milk solids and in which nonmilk fat has been substituted for the butterfat, are classified as Class I milk.

In this connection, it is noted that the Memphis decision recommends that filled milk products be defined separately from the fluid milk product definition, and that the product "filled milk" be included in the fluid milk product definition. Accordingly, the fluid milk product defini-

tion of Order 131 is amended to adopt this recommendation.

Another proposal by the proponent was that the provision that excludes from Class I classification, sterilized products in hermetically sealed containers be clarified. The purpose of such clarification would be to indicate specifically the type of containers that would be covered by the exclusion. It would distinguish, for example, between the use of skim milk and butterfat in evaporated milk packaged in metal cans and fluid products which have the characteristics of fresh products and are packaged in paper containers.

Substantial changes in marketing practices concerning the distribution of sterilized products have occurred within the dairy industry since the 1967 hearing at Phoenix. The testimony concerning this proposal was limited to glass and metal containers and thus may not reflect current marketing conditions. Accordingly, the proposal is denied.

Proponent also proposed that yogurt be classified as Class I milk because: (1) It is similar in form and use to sour cream and buttermilk, (2) it is required to be labeled "Grade A", (3) handlers depend on the availability of locally inspected milk for its manufacture, and (4) all yogurt sold in the market is manufactured in the same plants that process and package fluid milk products.

Yogurt has been classified in the lowest price class since the inception of the order in 1955. The principal reason advanced by proponent for now classifying yogurt as Class I milk is that it is required to be labeled as Grade A milk by the local health authorities.

The decision in which yogurt was included in the lowest price class (20 F.R. 6344, official notice of which is hereby taken) indicated that the applicable health ordinances for the marketing area did not require yogurt to be made exclusively from milk approved by local health authorities.

The record fails to establish that marketing conditions indicated in 20 F.R. 6344 with respect to yogurt have changed since the matter was last reviewed. Hence, it is concluded that the classification of yogurt should not be changed at this time.

5. *Transfer provisions.* The provision requiring a "Grade C" label for cream transferred outside the market for manufacturing should be revised.

A witness for the cooperative association in the market testified that the present provision impedes the sale of cream from the pool plant operated by the association to ice cream manufacturers some distance from the market.

The quality implication of the present "Grade C" labeling provision is apparent, and should be changed. Yet, some provision is needed to prevent such cream from being used in fluid milk products. In this connection, it should be sufficient to provide that cream so transferred with certification designating "manufacturing use only" may be classified as Class III milk.

6. *Location differentials at Tucson.* The zone location differential at Tucson,

Ariz., should be lowered to 12 cents per hundredweight to reflect procurement changes in the area. The zone location differential of plus 30 cents per hundredweight now applicable at Tucson has not been changed since the order was promulgated in 1955.

Under the order, the Class I and uniform prices are increased 30 cents per hundredweight over the f.o.b. market price for milk received from producers at pool plants located at Tucson. Four pool plants are located at Tucson, and two of them purchase milk from producers. The purpose of the zone location differential is to encourage the movement of milk to the Tucson segment of the market from the major milk producing segment of the milkshed (Maricopa County). The changes herein provided are the same as those proposed by producers.

One of the handlers opposed the proposal to amend the provision. He criticized proponent's proposal because it did not give sufficient weight to production costs in the Tucson area. He contended that production costs are relatively high in the area and that this justifies a continuation of the plus 30-cent zone differential now provided.

In this connection, when the order was promulgated in 1955 the 30-cent higher price at Tucson was based primarily on the actual cost of hauling milk from the main segment of the Central Arizona milkshed. Official notice is hereby taken of the decision containing the applicable findings (20 F.R. 7695).

Since the promulgation of the order and the establishment of the 30-cent differential between Phoenix and Tucson, a marked change has occurred in the pattern of the milk supply for the market.

Average daily production per farm has increased from 1,807 pounds per day in 1956 to 6,652 pounds per day in 1966. Thus, increased production per farm and resultant fewer stops per truckload together with a vastly improved highway system have resulted in a lower per hundredweight cost for transporting milk.

The major consideration in reviewing the differential between Tucson and Phoenix is the substantial increase that has taken place in the production of milk in the area lying between Phoenix and Tucson. This is particularly true in the area of Casa Grande in the northern part of Pinal County. The increase in production in this locality is, of course, in part attributable to the very substantial increase in production per farm which has occurred throughout the whole milkshed. The major factor, however, has been the relocation of farms which has occurred. Some producers formerly located in the vicinity of Phoenix have moved their herds to new locations between the two cities as the expanding metropolitan area of Phoenix has encroached upon the farms formerly surrounding that city.

A substantial proportion of the milk of its member producers is hauled by the cooperative association in its own trucks. From the production area about

Casa Grande, the hauling rate from the farm to plants in Tucson is 30 cents per hundredweight. From the farm to Phoenix the hauling rate 18 cents per hundredweight. Thus, a producer whose milk is delivered to Tucson has a net return at the farm 18 cents higher than his neighbor whose milk is delivered to a Phoenix plant.

Under today's conditions, the 30 cent higher price at Tucson, instead of equalizing prices between Phoenix and Tucson producers, creates a serious disparity in net farm prices in the production area developing between the two cities. As production shifts to this location a continuation of the present differential could result in a dislocation of supplies between the two major segments of the market.

It is concluded that the present zone location differential of plus 30 cents which is applicable at Tucson no longer reflects current marketing conditions for the area. A substantial proportion of the milk supply for the Tucson area is no longer identified with the main segment of the milkshed as previously. A differential which more reasonably reflects the prevailing cost of moving milk to Tucson should be provided. This can be done by providing a zone location differential of plus 12 cents over the f.o.b. Class I and uniform prices for producer milk delivered to a pool plant at Tucson.

As a corollary change, the Class I differential should be increased 2 cents. This will maintain in the pool approximately the same amount of money represented in lowering the zone location differential as proposed, and will help to assure the market of an adequate supply of milk for fluid use.

7. *Obligations of a handler operating a partially regulated distributing plant.* The findings and conclusions of the Memphis decision concerning the obligation of a partially regulated distributing plant that distributes filled milk in the marketing area are hereby adopted. If the filled milk is made from reconstituted nonfat dry milk, the obligation is at the rate of the difference between the Class I and Class III prices. If the filled milk is made from fresh skim milk, the handler has the option of making a payment into the producer-settlement fund on the quantity of such milk disposed of in the marketing area at a rate equal to the difference between the Class I and the uniform prices.

At the Phoenix hearing, the principal cooperative serving the market proposed that the rate charged a partially regulated distributing plant on sales of fluid milk products in the marketing area be changed from the difference between the Class I and uniform prices to the difference between the Class I and Class III prices.

The order now provides that an unregulated distributor who disposes of some fluid milk products on routes in the regulated marketing area shall be accorded four options as a means of integrating his plant operations into the market's regulatory scheme.

(a) He may show that payment for his total dairy farm supply has been at least

as much as if his plant were fully regulated;

(b) He may show that he has purchased Class I milk priced under some Federal order in an amount at least equivalent to his total Class I sales within the regulated area;

(c) He may make a payment into the producer-settlement fund on the quantity of Class I sales made in the regulated market at a rate equal to the difference between the Class I price and the blend price for the regulated market; or

(d) Any combination of (b) and (c). Proponent contends that the amendment is needed because substantially lower-priced milk from California is displacing fluid milk sales to military bases by Central Arizona handlers.

The marketing conditions involved in this issue are comparable to those described in the decision issued by the Department following the Lehigh Valley case. Consequently, official notice of that decision is hereby taken (29 F.R. 9218). The decision indicated that a rate of payment representing the difference between the Class I price and the surplus price might be justified if it were found that the unregulated milk sold in a Federal order marketing area carries only a surplus value.

We may not conclude from the record that such is the case in the proceeding. An exhibit was introduced by proponent indicating that the prices paid by one Los Angeles, Calif., handler for milk sold to military bases averaged \$4.22 per hundredweight in 1966 for milk testing 3.5 percent butterfat content. This was 56 cents per hundredweight higher than the Central Arizona Class III price which averaged \$3.66 for 1966. The prices paid by another Los Angeles handler for "military milk" averaged 69 cents per hundredweight higher than Central Arizona Class III prices, while those paid by a third Los Angeles handler averaged 72 cents higher.

However, none of these prices was said by proponent to represent prices paid by Los Angeles handlers for milk sold to military bases in Arizona. There is no indication where the milk was actually sold.

Another exhibit indicated the Central Arizona Class III and blend prices and similar prices paid to 40 producers shipping milk to the Los Angeles market. However, the "blend" price for the Los Angeles market represents a blend price of the handler receiving the milk and does not represent a "blend" price for the market.

For 1965, the Class III prices paid for milk delivered by the 40 Los Angeles producers averaged 59 cents per hundred weight higher than the average of the Central Arizona Class III prices for the same year (both for milk testing 3.5 percent butterfat). For 1966, the Class III prices for the Los Angeles area averaged 22 cents per hundredweight higher than the Central Arizona Class III price.

For 1965 and 1966 the blend prices of the Los Angeles producers averaged 3 cents and 26 cents per hundredweight

lower, respectively, than the Central Arizona blend prices for the corresponding years.

These were the only California price data entered in evidence, and they cannot be specifically identified with milk sold in Arizona. Moreover, California milk that is sold to military bases in the Central Arizona marketing area (principally at Yuma) comes from the San Diego market and no price data were introduced concerning that area.

The price differences between Central Arizona regulated handlers and California unregulated handlers, which is the basis of this issue is not centered, as proponent contends, on the removal of California milk price regulation from sales to military bases. As indicated, proponent's price data were for the Los Angeles market whereas the milk for the military base at issue (near Yuma) comes from San Diego. The prices quoted for military milk are substantially above the Class III prices established by the California regulation, and the California Class III prices are substantially higher than Central Arizona Class III prices.

There is a substantial difference developing between the Central Arizona Class I prices and the Class I prices established by the California Milk Stabilization Regulation for the Los Angeles market. For 1965, Central Arizona Class I prices averaged 27 cents per hundredweight higher than Los Angeles Class I prices. For 1966, Central Arizona Class I prices averaged 78 cents higher than the Class I prices for the Los Angeles market. Thus, Central Arizona handlers might expect to meet increased competition from partially regulated handlers on packaged milk from Los Angeles for outlets, not military in the marketing area.

It is concluded that milk for Class I use in the Central Arizona marketing area is not being purchased, as proponent contends, by unregulated California handlers for prices equal to or lower than Central Arizona Class III prices. The proposal, therefore, is denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the

findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The following order amending the order as amended regulating the handling of milk in the Central Arizona marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. In § 1131.7, the introductory text immediately preceding paragraph (a) is revised as follows:

§ 1131.7 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk pursuant to the requirements specified in paragraph (a) or (b) of this section, and whose milk is received directly from the farm at a pool plant, or is diverted as producer milk pursuant to § 1131.13. The term "producer" shall not include a person with respect to milk diverted to a pool plant from an other order plant if such person retained producer status under the other order and if the operators of both the diverting plant and the plant to which diverted have requested Class III classification in their reports of receipts and utilization filed with the market administrators of the respective orders.

2. In § 1131.8, paragraphs (a) and (b) are revised to read as follows:

§ 1131.8 Pool plant.

"Pool plant" means any milk plant, except the plant of a producer-handler or a plant exempt pursuant to § 1131.61:

(a) Approved by a duly constituted state or municipal health authority for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the United States Government located within the marketing area, from which during the month:

(1) There are disposed of on routes fluid milk products, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and a cooperative association acting in the capacity of a handler pursuant to § 1131.10(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There are disposed of on routes in the marketing area fluid milk products, except filled milk, in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing areas as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk (from dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section: *Provided*, That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

3. In § 1131.9, the introductory text preceding paragraph (a), and paragraph (d) are revised to read as follows:

§ 1131.9 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant and which is not an other order plant nor a producer-handler plant.

4. Section 1131.11 is revised to read as follows:

§ 1131.11 Producer-handler.

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of in the marketing area on routes and who:

(1) Receives at his plant, or acquires for disposition on routes, fluid milk products only from:

(i) His own farm production, and
(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert non-fluid milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer, and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) A governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

5. Section 1131.15 is revised to read as follows:

§ 1131.15 Fluid milk product.

"Fluid milk product" means milk (including frozen or concentrated milk), cream (sweet or sour), skim milk, butter-milk, flavored milk, flavored milk drinks, filled milk, or any mixture in fluid form of milk, skim milk or cream (including such products made by reconstituting or recombining concentrated or dehydrated milk constituents with water), with or without other ingredients. This definition shall not include sterilized products packaged in hermetically sealed containers, a product which contains 6 percent or more nonmilk fat (or oil), egg-nog, yogurt, ice cream mix or aerated plastic or frozen cream.

6. Section 1131.16 is revised to read as follows:

§ 1131.16 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk pursuant to § 1131.41(a), other than a delivery to a plant described in § 1131.8(a).

7. A new § 1131.18 is added to read as follows:

§ 1131.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk

(whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1131.22, paragraph (i) is revised to read as follows:

§ 1131.22 Duties.

(i) Verify all reports and payments of each handler by audit, as necessary, of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and by such other means as are necessary;

9. In § 1131.30, paragraphs (b) and (c) are revised to read as follows:

§ 1131.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk.

(c) Each handler specified in § 1131.10 (d) who operates a partially regulated distributing plant shall report as required in this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement as to the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

10. In § 1131.44, paragraph (d), and subparagraph (5) of paragraph (g) are revised to read as follows:

§ 1131.44 Transfers.

(d) As Class I milk, if transferred or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located outside the marketing area and outside Imperial County, Calif., except that cream may be classified as Class III if prior notice is given to the market administrator, each container is labeled by the transferor as "cream for manufacturing use only" and such shipment is so invoiced.

(g) . . .

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to another class shall be classified as Class III; and

11. In § 1131.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised to read as follows:

§ 1131.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1131.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1131.41(c) (5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, in sequence beginning with Class III from the pounds of skim milk remaining in Class II and III but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class III utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, from cooperative handlers pursuant to § 1131.10(c), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in

excess of similar transfers to such plant, if Class III utilization is requested by the handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) or (4) (ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1131.22(1) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

§ 1131.51 [Amended].

12. In § 1131.51(a), the figure "\$2.30" is revised to "\$2.32".

13. In § 1131.53, paragraph (c) is revised to read as follows:

§ 1131.53 Location adjustments to handlers.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.51(a) shall be increased 12 cents.

14. Section 1131.61 is revised to read as follows:

§ 1131.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all the provisions of this part, except as specified in paragraphs (c) and (d):

(a) Any plant qualified pursuant to § 1131.8(a) which disposes of a lesser

volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order is exempted;

(b) Any plant qualified pursuant to § 1131.8(b) for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

(c) Each handler operating a plant described in paragraph (a) or (b) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1131.30 and 1131.31) and allow verification of such reports by the market administrator; and

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph, to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

15. Section 1131.62 is revised to read as follows:

§ 1131.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant except one from which less than an average of 600 pounds per day of Class I milk is disposed of on a route(s) in the marketing area shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to

§§ 1131.30(c) and 1131.31(c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1131.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1131.70(f) and a credit in the amount specified in § 1131.82 (b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph a value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

16. Section 1131.81 is revised to read as follows:

§ 1131.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.82, 1131.61, and 1131.62 and out of which he shall make all payments pursuant to § 1131.83: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

17. In § 1131.87, paragraphs (a) and (d) are revised to read as follows:

§ 1131.87 Termination of obligations.

The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat, involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation,
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the act, a petition claiming such money.

Signed at Washington, D.C., on June 17, 1969.

JOHN C. BLUM,
Deputy Administrator
Regulatory Programs.

[P.R. Doc. 89-7282; Filed, July 14, 1969; 8:45 a.m.]

[7 CFR Parts 1001-1006, 1011-1013, 1015, 1016, 1030, 1032-1036, 1040, 1041, 1043, 1044, 1046, 1049, 1050, 1060, 1062-1065, 1068-1071, 1073, 1075, 1076, 1078, 1079, 1090, 1094, 1096-1099, 1101-1104, 1106, 1108, 1120, 1121, 1125-1130, 1132-1134, 1136-1138]

MILK IN MEMPHIS, TENNESSEE, AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing areas	Docket No.
1007	Memphis.....	AO-219-A21.
1001	Massachusetts-Rhode Island-New Hampshire.....	AO-14-A43.
1002	New York-New Jersey.....	AO-71-A55.
1003	Washington, D.C.....	AO-253-A18.
1004	Delaware Valley.....	AO-160-A36.
1005	Tri-State.....	AO-177-A32.
1006	Upper Florida.....	AO-356-A3.
1011	Appalachian.....	AO-251-A10.
1012	Tampa Bay.....	AO-347-A7.
1013	Southeastern Florida.....	AO-286-A15.
1015	Connecticut.....	AO-305-A20.
1016	Upper Chesapeake Bay.....	AO-312-A15.
1030	Chicago Regional.....	AO-361-R01.
1032	Southern Illinois.....	AO-313-A15.
1033	Cincinnati.....	AO-166-A37.
1034	Miami Valley.....	AO-175-A27.
1035	Columbus.....	AO-176-A24.
1036	Eastern Ohio-Western Pennsylvania.....	AO-179-A28-R01.
1040	Southern Michigan.....	AO-225-A19-R01.
1041	Northwestern Ohio.....	AO-72-A33.
1043	Upstate Michigan.....	AO-247-A13.
1044	Michigan Upper Peninsula.....	AO-299-A14.
1046	Louisville-Lexington-Evansville.....	AO-123-A34.
1049	Indiana.....	AO-319-A12.
1050	Central Illinois.....	AO-355-A4.
1060	Minnesota-North Dakota.....	AO-360-A1.
1062	St. Louis-Ozarks.....	AO-10-A39-R01.
1063	Quad Cities-Dubuque.....	AO-105-A27-R01.
1064	Kansas City.....	AO-23-A33.
1065	Nebraska-Western Iowa.....	AO-86-A21-R01.
1068	Minneapolis-St. Paul.....	AO-178-A21.
1069	Duluth-Superior.....	AO-153-A15.
1070	Cedar Rapids-Iowa City.....	AO-229-A18.
1071	Neosho Valley.....	AO-227-A21.
1073	Wichita.....	AO-173-A22.
1075	Black Hills.....	AO-248-A9.
1076	Eastern South Dakota.....	AO-269-A12.
1078	North Central Iowa.....	AO-273-A13.
1079	Des Moines.....	AO-295-A15.
1080	Chattanooga.....	AO-266-A19-R01.
1094	New Orleans.....	AO-103-A26.
1096	Northern Louisiana.....	AO-257-A16.
1098	Nashville.....	AO-184-A28.
1099	Padsuah.....	AO-183-A20.
1101	Knoxville.....	AO-105-A17.
1102	Fort Smith.....	AO-237-A16.
1103	Mississippi.....	AO-346-A6.
1104	Red River Valley.....	AO-238-A12.
1106	Oklahoma Metropolitan.....	AO-210-A25.
1108	Central Arkansas.....	AO-243-A18.
1120	Lubbock-Plainview.....	AO-328-A8.
1121	South Texas.....	AO-364-R01.
1123	Puget Sound.....	AO-229-A18-R01.
1126	North Texas.....	AO-231-A32-R01.
1127	San Antonio.....	AO-238-A18.
1128	Central West Texas.....	AO-235-A21.
1129	Austin-Waco.....	AO-256-A14.
1130	Corpus Christi.....	AO-259-A17.
1132	Texas Panhandle.....	AO-262-A17.
1133	Inland Empire.....	AO-275-A18-R01.
1134	Western Colorado.....	AO-301-A8-R01.
1136	Great Basin.....	AO-306-A12.
1137	Eastern Colorado.....	AO-326-A13.
1138	Rio Grande Valley.....	AO-335-A11.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in each of the marketing areas heretofore specified.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, as amended, were formulated, was conducted at Memphis, Tenn., on February 19-22, April 23-24, and May 21-24, 1968, pursuant to notice thereof which was issued February 6, 1968 (33 F.R. 2785).

Seventy-six milk orders were listed in the notice of hearing. Eleven of these orders have since been merged with another order(s). Greater Wheeling (Part 1008), Clarksburg (Part 1009) and Youngstown-Warren (Part 1048) were merged into the Eastern Ohio-Western Pennsylvania order. Northwestern Indiana (Part 1031), Rock River Valley (Part 1038), Milwaukee (Part 1039), Northeastern Wisconsin (Part 1045), and Madison (Part 1051) were merged into the Chicago Regional order. Fort Wayne (Part 1047) was merged into the Indiana order (formerly Indianapolis, Indiana). Sioux City (Part 1066) was merged into the Nebraska-Western Iowa order. Ozarks (Part 1067) was merged into the St. Louis-Ozarks order (formerly St. Louis).

As a result, the proposed amendments relate only to the existing 65 orders as merged. Such mergers have had no effect on the basic issue involved in this proceeding. This is because the decision herein deals with the matter of how filled milk should be classified and priced under Federal milk orders. The treatment would have been appropriate under each of the orders prior to merger and it is equally appropriate under the orders as merged. Therefore, the findings and conclusions of this decision are equally applicable to the orders as merged.

Certain changes are being made in the Central Arizona order in its application to filled milk and producer-handlers. These matters were considered at a hearing held in Phoenix, Ariz., February 7-10, 1967, on proposals to amend the Central Arizona order pursuant to notice issued December 14, 1966 (31 F.R. 16277) and January 12, 1967 (32 F.R. 415). The record of that hearing was reopened in connection with the national hearing on which record this decision is based. Comparable changes in the Central Arizona provisions relating to filled milk and producer-handlers are contained in a separate revised decision on that order issued concurrently with this decision.

For the Chicago Regional, Southern Michigan, Eastern Ohio-Western Pennsylvania, St. Louis-Ozarks, Quad Cities-Dubuque, Nebraska-Western Iowa, Chattanooga, Puget Sound, North Texas, Central Arizona, Inland Empire, South Texas and Western Colorado markets the hearing constituted a reopening of prior hearings on matters relating to the particular markets, including issues other than the issues herein discussed.

Prior to scheduling the hearing, the Department had received numerous expressions of concern from producer and handler groups about the possible competitive impact of filled milk and imitation milk on the existing structures of markets under Federal order regulation. In view of the widespread concern, the Department invited industry representatives to a series of public meetings. This was done to achieve the widest possible understanding of the problems before going to a hearing.

The hearing notice opened for discussion all problems which the various parties had indicated in their proposals or in the public meetings to be related to filled or imitation milk under order regulation.

The material issues on the record of the hearing were:

1. Interstate commerce.
2. Classification of filled milk.
3. Treatment of reconstituted skim milk in filled milk disposed of by regulated handlers, partially regulated handlers or producer-handlers.
4. Definition of filled milk for order purposes.
5. Reclassification of fluid products of milk not now in Class I.
6. Conforming changes in order provisions.

FINDINGS AND CONCLUSIONS

The following findings and conclusions, on the material issues, are based on evidence presented at the hearing and the record thereof:

1. *Interstate commerce.* Filled milk disposed of in any of the marketing areas of these orders directly burdens, obstructs or affects interstate commerce in milk and milk products. It has been previously determined (at the time of promulgation of the particular order) that all milk marketed in each of these marketing areas is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products. Filled milk dis-

posed of in these markets is, in content, substantially a product of milk and competes for the same sales outlets as milk. It follows that the marketing of the milk ingredients contained in filled milk in a Federal order market burdens, obstructs or affects interstate commerce in milk and milk products. This conclusion applies whether the marketing of filled milk is by a regulated plant or by a plant not fully regulated under an order, since both compete for similar outlets in the market.

Manufactured milk products may be used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market irrespective of where the milk is produced. Therefore, manufactured milk products when used in the production of filled milk for disposition in these markets likewise burden, obstruct or affect interstate commerce in milk and milk products.

The shipment of filled milk across State lines is prohibited by the Filled Milk Act. Nevertheless, intrastate commerce in filled milk burdens, obstructs, and affects interstate commerce in milk and milk products regulated under Federal milk orders. This decision relates to the appropriate classification and pricing of milk and milk products under the Agricultural Marketing Agreement Act of 1937, as amended, when such milk or milk products are used in filled milk.

2. *Classification of filled milk.* Skim milk disposed of for fluid consumption in "filled milk" should be Class I milk under each of the respective orders.

The product marketed as "filled milk" in Federal order markets is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milkfat in whole milk. Accordingly, well over 90 percent of the product is skim milk. In most filled milk the skim milk portion is fresh fluid skim milk as separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance.

Filled milk is distributed in regulated markets by milk handlers in the course of their regular business through the same outlets and in the same types of containers as whole milk.

At the time of the hearing filled milk products simulating whole fluid milk were being marketed by handlers under 24 of the 76 Federal orders then in force. The combined volume of filled milk sales in these markets was about 4.6 million pounds in February 1968. For all Federal order markets this was about 0.15 percent of total Class I sales.

About half of the 4.6 million pounds of filled milk was sold in the Central Arizona market. There it represented about 6.8 percent of the Class I disposition of local handlers in February 1968. In February 1969, the sales of filled milk by Central Arizona handlers amounted to about 3.5 million pounds, or 10.3 per-

cent of total Class I disposition of handlers. (Official notice is taken herein of the March 1969 issue of "Market Information Bulletin" prepared and distributed by the Central Arizona market administrator.)

In all but two markets where filled milk is sold, the milk product content therein has been subject to the same regulatory treatment as the general category of fluid milk products. That is, it is treated as a Class I disposition. Skim milk is the principal milk product involved in the classification since any residual butterfat would be minimal.

Even with Class I classification, regulated handlers disposing of filled milk make a savings in cost by substituting vegetable fat for butterfat. This then is the main incentive for the marketing of filled milk under the present application of the orders. Such cost difference of vegetable fat versus butterfat is not an issue in this hearing, however, and is relevant only to the extent that it explains a profit motivation for marketing the product under order regulation even though the skim milk content has been priced as Class I milk.

The net cost saving due to substitution of fat and allowing for the cost of added emulsifiers and stabilizers is about 2.9 cents per quart. This is based on costs of coconut oil, emulsifiers and stabilizers as shown in Exhibit No. 22, and on average Class I prices and butterfat differentials for February 1968.

The evidence in the hearing record supports the conclusion that classification of the skim milk and butterfat in filled milk as Class I disposition is appropriate. Filled milk marketed in simulation of milk is already, under most orders, properly treated as a Class I fluid milk product disposition.

The specific language of the Act with respect to classification is that each order shall contain terms " * * * classifying milk in accordance with the form in which or the purpose for which it is used * * * ". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other

Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

For purpose of illustration, a product within the "fluid milk product" category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

The product "filled milk" therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product.

Handlers generally opposed Class I classification although they acknowledged filled milk to be a substitute for fluid milk and intended for similar purposes. In view of the preceding findings and conclusions it is necessary to reject handlers' testimony that the skim milk portion of filled milk should be priced lower than Class I. Further, handlers' testimony on the possible competition of synthetic products has no particular application to filled milk. Such competition relates to the entire category of fluid milk products.

Since we are dealing with a product, filled milk, which is clearly marketed for the same use as whole milk, is composed principally of milk products, is made in the semblance of whole milk, and is, in fact, designed as a substitute for whole milk, returns to dairy farmers should be the same for the corresponding milk components of the two products. This recognizes that the appropriate Class I price level serves to assure an adequate but not excessive milk supply. Therefore, the skim milk (or butterfat) in both products, and in other fluid milk products, should make proportionate contributions to this objective. This is accomplished by the classification of all such products as Class I milk.

3. *Treatment of reconstituted skim milk in filled milk.* As previously stated, some of the filled milk sold in regulated markets is made by combining "reconstituted skim milk" with vegetable fat and other minor ingredients. "Reconstituted skim milk" commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk.

Prior findings and conclusions (under issue No. 2) dealt with filled milk as a product made with fresh skim milk. But when filled milk is made with reconstituted skim milk a somewhat different regulatory problem is involved. Primarily the problem relates to the conversion

by a handler of a product, such as nonfat dry milk, normally priced as a surplus use into another product for Class I use. In addition, the possible entrance into the market of reconstituted products from unregulated sources enlarges the problem.

The potential of these conditions for disruptive influence on the market for producer milk is extremely serious because disposition of a product for a Class I use but pricing it in a surplus price class undermines the classified pricing system.

A determination consequently must be made of the proper classification of the resultant reconstituted skim milk and its regulatory treatment whether received as such by the handler from an unregulated source or reconstituted in his own plant.

Reconstituted skim milk in filled milk disposed of for fluid consumption should be treated as Class I milk.

Filled milk made with reconstituted skim milk is from a marketing standpoint essentially similar to filled milk made with fresh skim milk. It has the same material composition, is in the same form, and is intended for the same primary purpose—to be used as a beverage in substitution for milk. The reconstituted product competes in the same market channels and for the same wholesale and retail market outlets as filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level.

Reconstituted skim milk in filled milk should be classified and priced on the same basis as reconstituted milk in other fluid milk products to achieve uniformity of pricing for milk in similar uses. Uniformity of pricing could not be achieved if some handlers have a lower cost by substituting a surplus class product (in this case usually nonfat dry milk) for a Class I use.

Nonfat dry milk is an important product outlet for the daily and seasonal surpluses in many of the regulated fluid milk markets. Consequently, it not only may be derived from milk of manufacturing quality but often will be readily available from graded milk which is surplus to the local fluid market. Whichever the source, it is priced at the manufacturing milk price level—the lowest price for any use of milk.

The objectives of classified pricing are uniformity of pricing according to form or use and providing an adequate return to producers for the fluid market. Therefore, the widespread disposition of filled milk made from reconstituted skim milk, if the skim milk were not subject to some "equalizing" payment, could lead to total defeat of such objectives. Certainly, the classification and pricing plan should protect the Class I market from the potential effects of competition with products produced from the market's own surplus or similar products produced elsewhere at a manufacturing price when used in filled milk.

It should be noted that the orders already contain specific provisions dealing with disposition by a regulated han-

dler of other fluid milk products which have been reconstituted from nonfluid milk products. The problem of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with in the decision issued June 19, 1964 (29 F.R. 9002), official notice of which is taken. The decision applied to orders in 76 marketing areas.

The findings and conclusions which relate to this subject appearing at 29 F.R. 9010 were as follows: "Certain milk by its very nature must be treated as surplus when received at market pool plants regulated by a Federal order and, therefore, it must be assigned a surplus value. One such source is milk received at a regulated plant, in either bulk or packaged form, from a producer-handler (under any Federal order). Another source is milk produced by the reconstitution to fluid form of manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk. Still another source is milk of manufacturing grade (non-Grade A milk) which is not eligible for disposition for fluid consumption in the market. As to milk from these sources, a payment into the producer-settlement fund at the difference between the Class I and surplus prices must be required of the receiving handler when such milk is allocated to Class I, following 'down-allocation' to the extent it can be absorbed in lower priced uses.

"A surplus value likewise is properly assigned to reconstituted milk (for instance, the result of combining nonfat dry milk or condensed milk with water). The products used in such reconstitution process are made from milk which always carries a manufacturing, or surplus, value. Producer milk used to produce such products is priced as surplus under each of these Federal orders. Since the milk used to produce these products is originally priced as surplus milk, payment into the producer-settlement fund at the difference between the Class I and surplus price is necessary to insure competitive equity with producer milk when reconstituted milk is used in Class I. No recognition should be given to processing costs involved in the manufacture of the products derived from unregulated milk and used in reconstitution since similar costs are incurred in processing producer milk into such products."

The method of treating reconstituted products described in the 1964 decision is appropriately applicable to reconstituted skim milk used in filled milk. The nonfluid milk products in such use are derived from milk having a surplus value and should be assigned to surplus uses of the handler to the extent possible. To the extent that such reconstituted product cannot be assigned to a surplus use class it must be considered as used in Class I. In this case payment to the producer-settlement fund at the difference between the Class I price and surplus price is necessary not only to assure competitive equity among handlers but also to insure the integrity of the

classified pricing system as a means of assuring reasonable prices to producers.

Uniform treatment of reconstituted skim milk in filled milk should apply to the several types of handling operations. While one handler may reconstitute skim milk from nonfluid milk products in his own regulated plant, another may purchase filled milk containing reconstituted skim milk from other handlers. A third type of operation is distribution of reconstituted product in the marketing area from a plant which is not fully regulated.

For skim milk reconstituted in a fully regulated plant, the allocation provisions of each order already assign "other source milk in a form other than a fluid milk product" first to surplus use, and then any remainder to Class I. For the quantity assigned to Class I disposition, a charge at the Class I price less the surplus price applies. This charge applies whether the reconstituted product is disposed of on routes, or to another plant. In the case of interplant transfers (including transfers between order markets), the orders already provide for the classification of the fluid milk product transferred. The quantity so classified as Class I would be subject to the charge at the transferor plant, except in some cases in a handler pool market.

New provisions would be needed to treat receipts of filled milk at a regulated plant if the receipt is from an unregulated source and contains reconstituted skim milk. The receipt should be assigned in series first to the surplus class and then successively to the next higher price classes. The receiving handler should be charged the Class I price less the surplus price for any quantity of skim milk or butterfat so assigned to Class I utilization. This method would extend the uniform application of the same rate of charge as applies in the case of a handler making reconstituted product in his own plant.

A situation similar to receipt from an unregulated source may arise if filled milk containing reconstituted skim milk is received from a plant regulated under an individual handler pool order. This could happen because the individual handler pool orders price only the Class I usage assignable to receipts of producer milk at the handler pool plant. If the Class I disposition of the plant exceeds producer milk received there, which is possible if reconstituted product is used for filled milk, then this Class I usage is not priced.

In this case the receipt at a market order pool plant from a handler pool plant should be treated the same as a receipt from an unregulated plant. The receipt of reconstituted filled milk would be allocated first to surplus class and any remainder to higher classes. The receiving handler would be obligated for any of such receipt assigned to Class I at the Class I price less surplus class price, adjusted to the location of the plant from which received.

Another aspect of disposition of reconstituted filled milk by a pool plant under an individual handler pool order is the

possibility that such plant could dispose of the product on routes in another marketing area where market pooling applies. In such a case the operator of the handler pool plant should be obligated to pay the difference between the Class I and surplus prices on such disposition in the marketing area to the extent that such disposition is not assigned to producer milk at his pool plant. The payment should be made into the producer-settlement fund of the market where sold. The Class I price used for this purpose would be the order price of the market where the disposition is made, adjusted for location of the plant. Such payment is necessary to apply the same treatment to reconstituted filled milk sales by the pool plant under the individual-handler pool order as would apply to a plant regulated by the order applicable to the area in which the route sales are made.

Partially regulated distributing plants likewise may dispose of reconstituted filled milk in the marketing area. The term "partially regulated distributing plant" applies to a plant which has route disposition of fluid milk products in the marketing area too small to qualify it as a pool plant, or which otherwise does not meet the pooling requirements of the particular order. Each of the orders contains specific provisions which apply to such plants for the purpose of achieving a reasonable competitive parity between these plants and fully regulated handlers. These provisions should be modified with respect to Class I products containing reconstituted skim milk disposed of in the marketing area.

The provisions allow certain options to the operators of partially regulated distributing plants, except in the case of the Massachusetts-Rhode Island-New Hampshire, New York-New Jersey, and Connecticut orders. In each of these orders, fluid milk products disposed of by nonpool plants on routes in the marketing area or received from such plants at regulated plants for Class I use are pooled. In effect, the operator of the plant disposing of such fluid milk products that are classified in Class I is charged the difference between the Class I price and the blended price on any of such quantities in excess of receipts of pool milk classified as Class I.

Under all other orders, three additional options are allowed. Two are very similar to the treatment under the northeastern orders.

One would allow such a handler to offset his disposition in the marketing area by purchases of Class I milk from fully regulated plants.

The second alternative would allow such handler to make payment into the producer-settlement fund with respect to his Class I disposition in the marketing area at a rate per hundredweight equal to the Class I price less the uniform price. The partially regulated handler is given credit for any quantity of Class I milk purchased from fully regulated plants.

Under a third option not allowed under the northeastern orders the value of such handler's milk utilization is computed in the same manner as for a pool plant. The handler then has the choice

of paying this sum to the Grade A dairy farmers supplying his plant or dividing the sum between payments to such farmers and payments to the producer-settlement fund.

The options now provided in the orders are designed to apply to a partially regulated handler whose disposition in the marketing area is primarily milk received from dairy farmers. But if such disposition is wholly or largely filled milk made with reconstituted skim milk, the payment now required (Class I price less uniform price) would not be equitable in relation to the requirement upon pool handlers that they pay the Class I less surplus price for such Class I disposition. Also, fully regulated plants are subject to Class I price less surplus price obligation on all Class I disposition of reconstituted skim milk, whether in filled milk or in other Class I disposition. This same charge should apply to partially regulated plants with respect to disposition in the marketing area of any fluid milk product containing reconstituted skim milk. Such treatment is necessary to make the obligation for disposition of reconstituted product comparable to the obligation upon a pool handler for the same kind of utilization.

Provision accordingly should be made for a handler operating a partially regulated distributing plant to pay into the producer-settlement fund at the Class I price less surplus price with respect to the quantity of reconstituted skim milk in Class I products disposed of on routes in the marketing area. This would be similar to the provision which requires payment only on disposition in the marketing area.

Each partially regulated handler disposing of filled milk in a regulated marketing area must maintain adequate records of his receipts and utilization which will permit verification by the market administrator of his sources and disposition with respect to filled milk. Also, unless such a handler furnishes proof to the contrary, his disposition of filled milk in the marketing area should be treated as a reconstituted product. Unless a partially regulated handler were required to prove that this disposition in the marketing area is not reconstituted product, he could gain substantial advantage because he could avoid the higher rate of payment needed on conversion of a surplus product to Class I use. For this reason the burden of proof that the filled milk was not made from reconstituted skim milk should be on the handler.

On disposition made in a market pool market the payment should be made into the producer-settlement fund of such market. This is the only practical disposition of the funds so collected. The distribution of such money among producers, as a part of the uniform price, results in an equitable disposition of the proceeds without advantage to any particular group. The money would assist in maintaining an adequate supply of high quality milk for the market. It is an administratively feasible plan which contributes to orderly marketing.

Handlers in supporting a special class for filled milk pointed out that the cost of nonfat dry milk purchased from wholesale distributors would exceed the surplus milk price for the equivalent quantities of raw fluid skim milk purchased from producers. Processing and handling costs in producing and marketing the dry product result in a higher cost for nonfat dry milk purchased as compared to fresh raw skim milk at the surplus or manufacturing milk price.

The reprocessing or reconstitution of fluid products from manufactured products involves handling and processing not characteristically part of supplying raw milk to a fluid market. To credit the handler with processing costs (even if they could be determined accurately in each instance) incurred in converting milk into its dry form would simply divert money to defray a portion of the handler's expense rather than using it to encourage the production of a sufficient supply of milk qualified for the fluid market. Certainly handlers would not at their own expense process the skim milk from producer milk into nonfat dry milk simply with the intention of reconstituting it to fluid form. This would be an uneconomical method of handling milk involving unnecessary expense and would serve no useful marketing purpose. Consequently, there is no justification for making an allowance for processing costs in computing a handler's obligation in the case of nonfat dry milk obtained from unregulated sources.

Some producer groups suggested that such equalization payments should be returned to the dairy farmers who produced the milk which was the source of the reconstituted products no matter how far away the nonfat dry milk was produced. This proposal was not complete since no specific plan was presented for accomplishing such payment to the dairy farmers whose milk was used. The practical difficulties involved preclude payment to such farmers.

In individual-handler pool markets the present practice that reconstituted skim milk shall be allocated to the handler's lowest class use should be continued.

In determining the obligation of pool handlers for use of reconstituted skim milk in filled milk, no allowance should be made for the processing cost of the nonfat dry milk irrespective of source.

Producer-handler disposition. Although producer-handler definitions vary among the several orders, the main intent in all markets is that the definitions shall apply only to a fluid milk processor who depends primarily on his own production for his milk supply. Some orders make provision for a producer-handler to supplement own production by purchases of milk from regulated sources, but safeguard the integrity of the pricing scheme by requiring that such transfers be priced as Class I milk to the seller.

The producer-handler definition of each order should be amended to preclude use of any reconstituted skim milk or unregulated milk in either filled milk or other fluid milk products.

The producer-handler is not subject to the pricing and pooling provisions of the applicable order. It should be made clear in each order, therefore, that a producer-handler using reconstituted skim milk or unregulated milk in filled milk or other fluid milk product disposition by so doing will disqualify himself from his exempt status as a producer-handler.

Reconstituted skim milk in filled milk has been marketed by at least one producer-handler in the Central Arizona market. This disposition represents a substantial part of his sales. This market was the first Federal order market to experience competition of filled milk sales by a producer-handler. It is also the market where greatest penetration of filled milk has taken place. The filled milk operation has had a significant disruptive influence on the stable and orderly marketing of milk in this market, the problems of which are dealt with in more detail in the concurrent decision for such market.

Similarly, a threat to uniformity of pricing could result in any market if producer-handlers were permitted to use reconstituted skim milk or unregulated milk in either filled milk or other fluid milk product disposition without restriction. It is not practical for this purpose to distinguish between receipts of concentrated milk products for reconstitution and fluid milk from an unregulated source. Either type of receipt could result in the same kind of advantage to a producer-handler, compared to a regulated handler.

Only seven orders currently contain no limit on such receipts but no present use of such receipts by producer-handlers in these markets is known. These orders are those regulating the Black Hills, Cedar Rapids, Cincinnati, Des Moines, Neosho Valley, Oklahoma Metropolitan, and Texas Panhandle marketing areas. These orders should be made similar to others to require that a producer-handler may not dispose of fluid milk products in excess of his own milk production and fluid milk products received from regulated plants as the individual orders provide. With such provision in the seven orders, all orders covered herein will preclude pool exemption of the producer-handler if he uses unregulated milk or milk products as Class I milk.

This kind of restriction on use of unregulated receipts does not interfere with the essential operation of a producer-handler in marketing his own milk production and in buying needed supplemental supplies, but is necessary to insure uniform pricing under the classified pricing plan.

4. Definition of filled milk for order purposes. A definition of filled milk should be constructed which meets the specific needs of order regulation and for such purpose only.

Most filled milk is made to simulate whole milk. There are however, many possible variations in the content of filled milk. Filled milk products within the beverage category may contain more or less vegetable fat than the normal fat

content of whole milk. In order to cover all products which might be in this category, the order term "filled milk" should apply to products containing less than six percent of nonmilk fat.

Filled milk therefore should be defined as:

"Any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than six percent nonmilk fat (or oil)."

Fluid products of the type described by the definition possibly could contain some milkfat as well as nonmilk fat. Such products also would be "filled milk" under this definition in order to assure the effectiveness of the proposed order provisions on filled milk. Filled milk, as so defined, should be included in the term "fluid milk product" as defined in each order.

Proposals submitted for the hearing would have defined filled milk in some markets to include higher fat products. There is insufficient information, however, on which to establish a Class I classification for filled milk products containing 6 percent or more nonmilk fat. While nonmilk fat products substituting for cream products are sold extensively, testimony did not develop the basis for defining such products as fluid milk products. Hence, on the basis of this record, skim milk and butterfat in filled milk containing 6 percent or more nonmilk fat should be classified in the surplus class in each order.

Sodium caseinate in any product regulated under these orders should be treated as a nonmilk ingredient at this time.

Some handlers requested that sodium caseinate, although derived in part from milk, not be regarded as a milk product if used as an ingredient in any kind of milk imitation or substitute. Sodium caseinate has been used as an ingredient in imitation milk made to resemble fluid milk. No proposal was made on the record for regulation of sodium caseinate as a milk product under the Federal milk orders.

5. Change in classification of certain milk products. No change should be made in the classification of milk products other than filled milk.

Notice was given to consider changing the classification of certain milk products. Handler testimony opposed such changes except on the basis of their consideration in further hearings dealing with particular situations in individual markets. The evidence adduced in this hearing is sufficient only with respect to the manner in which each order should classify the components of milk used in filled milk.

6. Conforming changes in order provisions. Order definitions serve, inter alia, to identify dairy farmers who are producers for the market and to identify plants to be regulated. The amendments with respect to filled milk require several changes in definitions.

Presently, the provisions defining pool plants and producers serve to qualify for pooling the milk approved for fluid use and regularly supplied to the fluid market. Except in a few instances, similar standards have not been established for sources of milk for filled milk. The order provisions should not result in pooling milk from unapproved and intermittent sources with milk of farmers regularly supplying and approved for the fluid market. Therefore, the determination of whether a distributing plant is qualified for pooling should not be affected by its disposition of filled milk in the marketing area. Similarly, inclusion of shipments of filled milk would not be a proper basis for qualifying a plant as a pool supply plant. Appropriate changes to accomplish these objectives are made as corollary amendments.

The definition of "partially regulated distributing plant" also should be modified to include any plant making disposition of filled milk on routes in the marketing area. This is done by deleting the specification that fluid milk products disposed of on routes in the marketing area be Grade A.

Throughout this decision reference is made to the term "distributing plant" and to the term "partially regulated distributing plant." These terms have been used to describe plants from which filled milk is, or may be, distributed. Under the present orders, a distributing plant is a plant that by meeting certain performance standards may obtain pool plant status. A partially regulated distributing plant is defined under a "nonpool plant" provision and in no event could become pooled without meeting the terms provided for distributing plants and pool plants. Where used in this decision, the two definitions "partially regulated distributing plant" and "distributing plant," are treated as separate and independent definitions.

The definition of "unregulated supply plant" should be modified to cover possible shipments of filled milk. While no monetary obligation is imposed on an unregulated supply plant, the term is used in the order to identify sources of receipts of unregulated milk. The location of the unregulated supply plant is considered in establishing the obligation of the receiving plant.

Order provisions with respect to reports, records and facilities, and market administrators' functions are modified to insert the term "filled milk" wherever needed to clarify the intention that the product is covered by the applicable order provision. Additional reports are needed with respect to quantities of disposition in the marketing area by pool plants and partially regulated distributing plants. These reports should show quantities of Class I disposition separately for filled milk and other fluid milk products. In the case of the partially regulated plant, the report should show also the quantity of reconstituted skim milk in fluid milk products disposed of in the marketing area.

Throughout the classification and allocation provisions, filled milk would be treated generally in the same manner

as other fluid milk products. Inventories of filled milk would be treated the same as inventories of whole milk. In those orders in which all inventories of fluid milk products are in the surplus class, the same basis of classification would apply to filled milk. If the order provides that packaged fluid milk products in inventory are in Class I, the same would apply to packaged inventory of filled milk. With respect to filled milk modified by the addition of nonfat milk solids, the same type of accounting would apply as now applies under each order to modified whole milk.

Receipts of filled milk containing reconstituted skim milk from a handler pool plant or an unregulated supply plant would be allocated so as to properly apply the charges which prior findings and conclusions state should apply to transfers from such plants. These receipts would be allocated first to the surplus class and then in series to the higher priced classification. Receipts of packaged filled milk from another order plant would be allocated in the same manner as other packaged fluid milk products from other order plants, except filled milk containing reconstituted skim milk.

The provisions with respect to any plant which qualifies as a pool plant under more than one order should be modified in order that the determination of which order applies will be based on disposition of fluid milk products other than filled milk. These changes will coordinate these provisions with the modifications of pool plant provisions previously described.

In most orders, the present administrative expense provision does not require amendment to include filled milk disposition. However, the administrative expense provision of the orders located in the Northeast require amendment to conform with all others. In certain orders, the present exemption from regulation (including administrative expense) on limited quantities of such Class I route disposition is continued.

In some provisions the words "skim milk and butterfat" are substituted for the word "milk" where this provides a more specific meaning. One instance is the provision (used in all orders) referring to termination of obligations.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Proposed findings and conclusions with respect to the conduct of the hearing are denied. Each of the rulings of

the hearing examiner with respect to the conduct of the hearing is approved.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The following order amending the orders as amended regulating the handling of milk in the specified marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

PART 1001—MILK IN THE MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE MARKETING AREA

1. Section 1001.17 is revised to read as follows:

§ 1001.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition exclusive of filled milk in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

2. Section 1001.22 is revised to read as follows:

§ 1001.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, filled milk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk, in either plain or sweetened form, and any product which contains 6 percent or more nonmilk fat (or oil). Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

3. In § 1001.25 the introductory text preceding paragraph (a) of the section is revised to read as follows:

§ 1001.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

4. A new § 1001.28 is added to read as follows:

§ 1001.28 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1001.35 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1001.35 Distributing plants.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order or a regulated plant under another Federal order) shall be a pool distributing plant in any month in which it meets the conditions specified in this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

6. Section 1001.36 is revised to read as follows:

§ 1001.36 Cooperative association plants located in the marketing area.

Each plant which is located in the marketing area and which is operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

7. In § 1001.37 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1001.37 Supply plants.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in paragraph (b), (c), or (d), of this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this section, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as received at that plant from dairy farmers' farms.

8. Section 1001.58 is revised to read as follows:

§ 1001.58 Additional assignment to Class II milk.

Assign to Class II milk the quantities received in fluid milk products not previously assigned to classes under §§ 1001.54 through 1001.57.

9. In § 1001.64 subparagraphs (2) and (3) are revised and a new subparagraph (4) is added to paragraph (b), paragraph (d) is revised, and subparagraphs (1) and (2) are revised and a new subparagraph (3) is added to paragraph (e), to read as follows:

§ 1001.64 Computation of value of fluid milk products at class prices.

(b) * * *

(2) Product assigned to Class I milk under § 1001.55(d), except that for any cooperative association in its capacity as a handler under § 1001.9(d), the quantity shall be reduced by the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity assigned to Class I milk under § 1001.55(d);

(3) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58; and

(4) Filled milk, not proved to have been made from other fresh fluid milk products assigned to Class I milk under § 1001.55 (g) and (h).

(d) Multiply by the applicable Class I price the quantities of:

(1) Pool milk distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(e) * * *

(1) Product assigned to Class I milk under § 1001.55 (a) through (c);

(2) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58; and

(3) Product for which a value is determined under subparagraphs (b) (4) and (d) (2) of this section.

10. In § 1001.87 paragraph (c) is revised to read as follows:

§ 1001.87 Payment of administration expense.

(c) The quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1001.64(d).

11. In § 1001.94 paragraphs (a) and (d) are revised to read as follows:

§ 1001.94 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in the obligation, unless within the 2-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of the producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which the handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable

period of time, files a petition under section 8c(15) (A) of the Act, claiming the money.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.15 is revised to read as follows:

§ 1002.15 Fluid milk product.

"Fluid milk product" means all skim milk and butterfat in the form of milk, fluid skim milk, filled milk, cultured or flavored milk drinks (except egg nog, and yogurt), concentrated fluid milk disposed of in consumer packages, cream (except storage, plastic or sour), half and half (except sour) and any other mixture of cream, milk or skim milk containing less than 18 percent butterfat (other than frozen desserts, frozen dessert mixes, whipped topping mixtures, evaporated milk, plain or sweetened condensed milk or skim milk, sterilized milk or milk products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil)); *Provided*, That when any fluid milk product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

2. A new § 1002.17 is added to read as follows:

§ 1002.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

3. In § 1002.28 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to § 1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: *Provided*, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under an other order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area: *Provided further*, That for purposes of the computations of percentages set forth in this section, skim

milk and butterfat in filled milk shall be excluded from skim milk and butterfat classified in Class I-A and Class I-B.

4. In § 1002.44(e) (3) a new subdivision (vi) is added to read as follows:

§ 1002.44 Transfers.

(e) * * *

(3) * * *

(vi) Any remaining Class I-A route disposition in the marketing area shall be subject to the pricing specified in § 1002.70(d) (2).

5. Section 1002.70(d) (2) is revised to read as follows:

§ 1002.70 Net pool obligation of handlers.

(d) * * *

(2) Multiply the difference between the applicable Class I-A and Class II prices, both adjusted by the applicable differential pursuant to § 1002.51, by the pounds of skim milk and butterfat in other source milk subtracted from Class I-A pursuant to § 1002.45(a) (4) and the corresponding step of § 1002.45(b) and by the pounds of skim milk and butterfat specified in § 1002.44(e) (3) (vi).

6. Section 1002.90 is revised to read as follows:

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the 18th day of each month, pay to the market administrator a sum not exceeding 2 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d) (2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the New Jersey Office of Milk Industry, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

7. In § 1002.91 paragraph (a) and (d) are revised to read as follows:

§ 1002.91 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the handler's utilization report on the skim

milk and butterfat involved in such obligation, unless within such period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable periods of time, files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1003—MILK IN THE WASHINGTON, D.C., MARKETING AREA

1. Section 1003.7 is revised to read as follows:

§ 1003.7 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment for the receiving and processing, or packaging of milk or milk products (including filled milk).

1a. In § 1003.8, paragraph (b) is revised to read as follows:

§ 1003.8 Approved plant.

(b) Any plant from which milk or filled milk is moved during the month to a plant specified in paragraph (a) of this section.

2. Section 1003.9 is revised to read as follows:

§ 1003.9 Pool plants and nonpool plants.

A "pool plant" means any plant described in this section pursuant to paragraph (a) or (b) of this section; a "non-pool plant" means any plant described pursuant to paragraph (c) of this section;

(a) An approved plant that is neither a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e):

(1) During any month within which a volume of milk not less than 10 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)) approved by a duly constituted health authority for fluid disposition, is disposed of on routes as Class I milk, except filled milk, in the marketing area: *Provided*, That the total quantity of Class I milk, except filled milk, disposed of from such plant (inside and outside the marketing area) is equal to not less than 50 percent of such plant's total receipts from such dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)); or

(2) During any month of October through February in which at least 50 percent, and during any month of March through September in which at least 40 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)) approved by a duly constituted health authority for fluid disposition is shipped in the form of milk, skim milk, or cream to a plant which disposes of not less than 10 percent of its approved milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1003.10(c)), and from other approved plants, on routes as Class I milk, except filled milk, in the marketing area and not less than 50 percent of such receipts are disposed of as Class I milk, except filled milk, inside and outside the marketing area: *Provided*, That any such plant which was a pool plant in each of the preceding months of October through February shall be a pool plant for the months of March through September, unless the handler gives written notice to the market administrator on or before the first day of such month that the plant is a nonpool plant: *And provided further*, That any such plant which was a nonpool plant during any of the months of October through February shall not be a pool plant in any of the immediately following months of March through September in which it was owned by the same handler or affiliate of the handler or by any person who controls, or is controlled by, the handler.

(b) Any manufacturing plant which is operated by a cooperative association 70 percent or more of whose members are qualified producers whose milk is regularly received during the month at other plants which are pool plants pursuant to paragraph (a) of this section (including the milk of such producers which is delivered to such other plants by a cooperative association in its capacity as a handler pursuant to § 1003.10(c)).

(c) Any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(1) "Other order plant" means a plant that is fully subject to the pricing and

pooling provisions of another order issued pursuant to the Act.

(2) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(3) "Partially regulated distributing plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1003.10(e) and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(4) "Unregulated supply plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1003.10(e) and from which fluid milk products are shipped to a pool plant.

3. Section 1003.12 is revised to read as follows:

§ 1003.12 Producer-handler.

"Producer-handler" means any person who, during the month:

(a) Operates a dairy farm and an approved plant from which Class I milk is disposed of on routes in the marketing area; and

(b) Whose sole source of supply for Class I milk is his own farm production and transfers of fluid milk products from pool plants.

4. In § 1003.16, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1003.16 Definitions of milk and milk products.

(a) "Fluid milk product" means milk and skim milk, concentrated milk (including frozen concentrated milk), reconstituted or fortified milk and skim milk, flavored milk and skim milk, cultured skim milk, buttermilk, filled milk, cream and any mixture of cream and milk or skim milk. "Fluid milk product" shall not include aerated cream, sour cream, yogurt, eggnog, products which are packaged in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil).

(f) "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of non-fat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1003.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1003.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler specified in § 1003.10 (a) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

6. In § 1003.31(a), subparagraph (2) is revised to read as follows:

§ 1003.31 Other reports.

(a) * * *

(2) On or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant(s) his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

6a. In § 1003.32, paragraph (b) is revised to read as follows:

§ 1003.32 Records and facilities.

(b) * * *

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

7. In § 1003.44, the introductory text of paragraph (e) is revised and paragraphs (d) and (f) (5) are revised to read as follows:

§ 1003.44 Transfers.

(d) * * *

(d) As Class I milk, if transferred in bulk in the form of milk, filled milk, skim milk or cream, or diverted to a nonpool plant that is neither an approved plant, an other order plant, a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e), located 300 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator, from the zero milestone in Washington, D.C., except that cream so transferred may be classified as Class II if the transferor claims such classification, gives sufficient notice so that the market administrator may verify conditions of shipment, establishes such cream was transferred without approval of a duly constituted health authority for fluid disposition, labels each container to show that the contents are for manufacturing only, and such shipment is so invoiced;

(e) As Class I milk, if transferred in bulk in the form of milk, filled milk, skim milk, or cream, or diverted in bulk to a nonpool plant that is neither an approved plant, an other order plant, a producer-handler plant nor a plant of a handler pursuant to § 1003.10(e), located less than 300 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from the zero milestone in Washington, D.C., unless the requirements of subparagraphs

(1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1003.46, subparagraphs (2), (3), (4), (7) and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1003.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (vi) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which approval by a duly constituted health authority for fluid disposition is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of fluid milk products from a handler pursuant to § 1003.10(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products for which the handler requests Class II utilization which were received from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to

the order regulating the plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraph (3) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) and (4) (i) of this paragraph, to the extent that the total of such receipts are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a co-operative association in its capacity as a handler pursuant to § 1003.10(c) and in receipts in bulk from other order plants classified and priced pursuant to the applicable order that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph; and

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made; and

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph, in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants

of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plant(s) if not classified or priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) (v), (3) (vi), (4) (i) or (4) (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from other order plants (except receipts from other order plant(s) not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (vi) and (4) (iii) of this paragraph, pursuant to the following procedure:

9. Section 1003.61 is revised to read as follows:

§ 1003.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in paragraphs (c) and (d) of this section:

(a) Any plant qualified pursuant to § 1003.9(a) (1) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Washington marketing area than in a marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1003.9(a) (2) or (b) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant has qualified as a pool plant pursuant to the first proviso of § 1003.9(a) (2) for each month during the preceding October through February.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such a manner as the market administrator may require (in lieu of reports pursuant to §§ 1003.30 and

1003.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

10. Section 1003.62 is revised to read as follows:

§ 1003.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1003.30(b) and 1003.31(e) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1003.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1003.70(e) and a credit in the amount specified in § 1003.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price unless an obligation with respect to such

plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1003.30(b) and 1003.31(c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1003.9, with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. Section 1003.83 is revised to read as follows:

§ 1003.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1003.61, 1003.62, 1003.84, and 1003.86 and out of which he shall make all payments

pursuant to §§ 1003.85 and 1003.86: *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

12. In § 1003.89 paragraphs (a) and (d) are revised to read as follows:

§ 1003.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such two-year period the market administrator notifies the handler that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

PART 1004—MILK IN THE DELAWARE VALLEY MARKETING AREA

1. In § 1004.7, paragraph (a) is revised to read as follows:

§ 1004.7 Plants.

(a) "Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged. However, a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk

products in transit for route disposition shall not be a plant under this definition.

1a. In § 1004.8, paragraphs (a) and (b) are revised to read as follows:

§ 1004.8 Pool plant.

(a) A distributing plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 45 percent, of the milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers for other markets) or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), is disposed of as route disposition, except filled milk, and the volume disposed of as route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such receipts.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, a supply plant from which during any of the months of September through February not less than 50 percent, and during any of the months of March through August not less than 40 percent, of the milk received from dairy farmers (including milk diverted as producer milk pursuant to § 1004.15 by either the plant operator or by a cooperative association), or from a cooperative association in its capacity as a handler pursuant to § 1004.10(c) is moved during the month to a distributing plant from which a volume of fluid milk products, except filled milk, which is not less than 50 percent during any month of September through February, or 45 percent during any month of March through August, of its receipts of milk from dairy farmers, cooperative associations, and from other plants is disposed of as route disposition during the month, and the volume disposed of as route disposition in the marketing area during the month is not less than 10 percent of such receipts. However, a supply plant shall not be qualified pursuant to this paragraph in any month in which a greater proportion of its qualifying shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

2. In § 1004.16, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1004.16 Milk and milk products.

(a) "Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, concentrated milk, and any other mixture of cream and milk or skim milk containing less than 18 percent butterfat (other than ice cream, ice cream mixes, ice milk mixes, eggnog, yogurt, sour half and half, sterilized prod-

ucts in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil): *Provided*, That when the product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content;

(f) "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

3. In § 1004.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1004.30 Reports of receipts and utilization.

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of milk from dairy farmers shall be reported in lieu of producer milk, such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

3a. In § 1004.32, paragraph (b) is revised to read as follows:

§ 1004.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

3b. In § 1004.41, subparagraph (8) of paragraph (b) is revised to read as follows:

§ 1004.41 Classes of utilization.

(8) In the skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of the weight of an equivalent volume of the fluid milk product prior to such addition.

4. In § 1004.44 subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1004.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim

milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

5. In § 1004.46 subparagraphs (3) through (9) and the introductory text of subparagraph (10) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1004.46 Allocation of skim milk and butterfat classified.

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (5) (v) of this paragraph as follows, if the fluid products so received are classified and priced as Class I milk under such order or the equivalent thereof if assigned to Class I milk under this order:

(i) From Class II milk, the lesser of the pounds remaining, or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.14(a) and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II;

(i) The pounds of skim milk in receipts of fluid milk products, for which the handler requests Class II utilization, which were received from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating the plant and from dairy farmers for other markets pursuant to § 1004.14(b), that were not subtracted pursuant to subparagraph (5) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), if not assigned pursuant to subparagraphs (3), (5), and (6) (i) of this paragraph, to the extent that the total of such receipts is in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.10(c), in receipts from Order 2 pool bulk tank units and in receipts in bulk from other order plants which are classified and priced pursuant to the applicable order, that were not subtracted pursuant to subparagraph (5)(v); and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plants if not classified and priced pursuant to the order regulating such plant, and from dairy farmers for other markets pursuant to § 1004.14(b), remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II, shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (5)(v) of this paragraph in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II milk, the pounds

subtracted pursuant to subparagraph (1) of this paragraph;

(9) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plants if not classified or priced pursuant to the order regulating such plant and from dairy farmers for other markets pursuant to § 1004.14(b), that were not subtracted pursuant to subparagraphs (5)(iv), (5)(v), (6)(i), or (6)(ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from Order 2 pool bulk tank units and in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (5)(v) or (6)(iii) of this paragraph, pursuant to the following procedure:

6. Section 1004.61 is revised to read as follows:

§ 1004.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in this section:

(a) Any plant qualified pursuant to § 1004.8(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Delaware Valley marketing area than in a marketing area regulated pursuant to such other order;

(b) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to § 1004.8 (a) or (b).

(c) Each handler operating a plant described in paragraph (a) or (b) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market

administrator may require (in lieu of reports pursuant to §§ 1004.30 and 1004.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

7. In § 1004.62 paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1004.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1004.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1004.70(e) and a credit in the amount specified in § 1004.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and

other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

8. In § 1004.88 paragraphs (a) and (d) are revised to read as follows:

§ 1004.88 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid:

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1005—MILK IN THE TRI-STATE MARKETING AREA

1. Sections 1005.7, 1005.10, 1005.11, 1005.12 and 1005.14 are revised to read as follows:

§ 1005.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, milk drinks (plain or flavored), reconstituted or fortified milk or skim milk (including "dietary" products), concentrated milk, egg nog, cream (not frozen), cultured sour cream, or any mixture in fluid form of milk or skim milk and cream: *Provided*, That such fluid milk products shall not include ice cream mix, frozen dessert mix, evaporated and condensed milk or skim milk, aerated cream products, dips (mixtures with sour cream or cheese base containing nondairy ingredients) not labeled Grade A, a product which contains 6 percent or more nonmilk fat (or oil), nor products which are sterilized or packaged in hermetically sealed containers.

§ 1005.10 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

§ 1005.11 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) specified in paragraph (a) or (b) of this section.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, physically received at such plant or diverted as producer milk from such plant pursuant to § 1005.16 is disposed of during the month on routes and not less than 10 percent of such receipts is disposed of in the marketing area on routes.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and during all other months not less than 40 percent, of the Grade A milk physically received at such plant from dairy farmers, reload points and handlers pursuant to § 1005.13(d) or diverted as producer milk from such plant pursuant to § 1005.16 is shipped to and physically received in the form of fluid milk products, except filled milk, at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through March shall be a pool plant for the months of April through August, unless the milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month

through August during which it would not otherwise qualify as a pool plant.

§ 1005.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1005.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

§ 1005.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no nonfluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

2. A new § 1005.20 is added and reads as follows:

§ 1005.20 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

3. In § 1005.30, paragraph (b) is revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat in route disposition in the marketing area, showing separately the in-area disposition of filled milk; and

(2) For a handler pursuant to § 1005.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

4. In § 1005.33, paragraphs (b) and (c) are revised to read as follows:

§ 1005.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

5. In § 1005.43(d), subparagraph (5) is revised to read as follows:

§ 1005.43 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified in a comparable classification as Class II or Class III; and

6. In § 1005.45(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1005.45 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1005.41(c) (2) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III) but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class III utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products from an other order plant that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) and (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (v) and (4) (ii) of this paragraph:

7. In § 1005.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1005.62 Obligations of handler operating a partially regulated distributing plant.

(1) The obligation that would have been computed pursuant to § 1005.60 at

such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be valued at the Class II or Class III price if allocated to such class at the pool plant or other order plant and be valued at the weighted average price (or, in its absence, the uniform price) of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1005.60(e) and a credit in the amount specified in § 1005.74(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1005.30 similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1005.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price pursuant to § 1005.61 at the same location or at the Class III price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool

plant less the value of such skim milk at the Class III price.

8. A new § 1005.63 is added and reads as follows:

§ 1005.63 Obligation of handler operating an other order plant.

Each handler who operate an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

9. Section 1005.73 is revised to read as follows:

§ 1005.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1005.62, 1005.63, and 1005.74 and out of which he shall make all payments from such fund pursuant to § 1005.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1005.80, paragraph (a) is revised to read as follows:

§ 1005.80 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligations, unless within such two-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of

producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. Sections 1006.7, 1006.8, 1006.9, and 1006.10 are revised to read as follows:

§ 1006.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk, filled milk, flavored milk or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers.

§ 1006.8 Distributing plant.

"Distributing plant" means a plant: (a) That is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month in the marketing area on routes; or

(b) That processes or packages filled milk and from which filled milk is disposed of during the month in the marketing area on routes.

§ 1006.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority or filled milk is shipped during the month to a pool plant.

§ 1006.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

2. In § 1006.11, the introductory text and paragraph (a) are revised to read as follows:

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1006.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool

plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

3. A new § 1006.19a is added and reads as follows:

§ 1006.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

4. In § 1006.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1006.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler pursuant to § 1006.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes, showing separately the in-area disposition of filled milk; and

(2) For a handler pursuant to § 1006.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

5. In § 1006.33, paragraphs (b) and (c) are revised to read as follows:

§ 1006.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

5a. In § 1006.41, paragraph (c) (1) is revised to read as follows:

§ 1006.41 Classes of utilization.

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat

dry milk, dry whole milk, dry whey, condensed or dry buttermilk, a product which contains 6 percent or more non-milk fat (or oil), and sterilized products in hermetically sealed containers:

6. In § 1006.45(a), subparagraphs (2), (3), (6), and (9) and the introductory text of subparagraph (10) are revised to read as follows:

§ 1006.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (vi) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1006.41 (c) (4) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or a Class II product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified below) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph:

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum

of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph, in excess of similar transfers to such plant, if Class III or Class II utilization was requested by the operator of such plant and the handler;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (v) and (6) (i) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (vi) and (6) (ii) of this paragraph:

7. In § 1006.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1006.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1006.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1006.60(e) and a credit in the amount specified in § 1006.74(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1006.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by

shipments to such plant during the month equivalent to the requirements of § 1006.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class III price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

8. A new § 1006.63 is added and reads as follows:

§ 1006.63 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

9. Section 1006.73 is revised to read as follows:

§ 1006.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1006.62, 1006.63, and 1006.74 and out of which he shall make all payments from such fund pursuant to § 1006.75: Provided, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1006.80, paragraphs (a) and (d) are revised to read as follows:

§ 1006.80 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1011—MILK IN THE APPALACHIAN MARKETING AREA

1. Sections 1011.7, 1011.8, 1011.9, 1011.18, and 1011.19 are revised to read as follows:

§ 1011.7 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or sale from a plant or plant store) of any milk or milk products

(including filled milk) classified as Class I milk pursuant to § 1011.41(a) other than a delivery to a plant.

§ 1011.8 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and processed or packaged: *Provided*, That this definition shall not be deemed to include any separate building, premises or facilities the primary function of which is to hold or store packaged milk or milk products (including filled milk) in finished form in transit on routes.

§ 1011.9 Pool plant.

"Pool plant" means any plant except the plant of a producer-handler or a plant described in § 1011.61:

- (a) From which during the month:
 - (1) Total disposition of Class I milk, except filled milk, is equal to not less than 50 percent of the milk approved or recognized by a duly constituted health authority for distribution within the marketing area which is received from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d); and
 - (2) Disposition of Class I milk, except filled milk, on routes in the marketing area is equal to not less than 10 percent of its total Class I milk disposition, except filled milk, on routes both inside and outside the marketing area;
- (b) From which milk or milk products, except filled milk, approved or recognized by a duly constituted health authority for distribution within the marketing area in an amount equal to not less than 50 percent of its receipts of such milk or milk products from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d) are shipped as milk, skim milk or cream in fluid form to plants specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through March shall be a pool plant for the following months of April through July unless the operator of such plant files with the market administrator prior to the first day of any month of April through July a written request for nonpool status for such month; or
- (c) Which is operated by a cooperative association, if the total pounds of milk, skim milk or cream approved or recognized by a duly constituted health authority for distribution within the marketing area which are transferred from such plant to pool plants qualified pursuant to paragraph (a) or (b) of this section and which are received at similarly qualified pool plants from producers who are members of the association are equal to not less than 70 percent of the pounds of Class I utilization, except filled milk, at such other pool plants.

§ 1011.18 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, form an other order plant that were not shipped to a pool plant.

§ 1011.19 Fluid milk product.

"Fluid milk product" means all milk, skim milk (including concentrated and reconstituted skim milk), filled milk, buttermilk, milk drinks (plain or flavored), cream (except frozen cream) and any mixture in fluid form of skim milk and cream (except sterilized products in hermetically sealed containers, ice cream mix, a product which contains 6 percent or more nonmilk fat (or oil), and eggnog).

2. A new § 1011.19a is added and reads as follows:

§ 1011.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

3. In § 1011.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported by this part, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1011.10 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes

in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition.

4. In § 1011.31, paragraph (b) is revised to read as follows:

§ 1011.31 Other reports.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

5. In § 1011.33, paragraphs (b) and (c) are revised to read as follows:

§ 1011.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products (including filled milk) on hand at the beginning and end of each month; and

6. Section 1011.35 is revised to read as follows:

§ 1011.35 Accounting periods.

A handler may account for the receipts, utilization and classification of milk and filled milk at any of his pool plants for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

7. In § 1011.44, paragraphs (c) and (f) (5) and the introductory text of paragraph (d) are revised to read as follows:

§ 1011.44 Transfers.

(c) As Class I milk, if transferred in bulk as fluid milk, skim milk, filled milk, or diverted to a nonpool plant that is neither an order plant nor a producer-handler plant, located more than 200 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall of Bluefield, West Virginia, or the city limits of Kingsport, Tennessee;

(d) As Class I milk, if transferred in bulk as fluid milk, skim milk, filled milk, or diverted to a nonpool plant that is neither an order plant nor a producer-handler plant, located not more than 200 miles, by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall of Bluefield, West Virginia, or from the city limits of Kingsport, Tennessee, unless the requirements of subparagraphs (1) and (2) of this para-

graph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1011.46(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1011.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting

the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers or from a cooperative association in its capacity as a handler pursuant to § 1011.10(d), and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an order plant that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) and (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) and (4) (ii) of this paragraph:

9. Section 1011.61 is revised to read as follows:

§ 1011.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempt from regulation under this order except as specified in paragraphs (c) and (d) of this section.

(a) Any plant qualified pursuant to § 1011.9(a) which would be fully regulated under the provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Appalachian marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1011.9 (b) or (c) which would be fully regulated under the provisions of another order issued pursuant to the Act unless such plant was a pool plant pursuant to § 1011.9 (b) or (c) for each month during the preceding August through March period.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1011.30), and allow verification of such reports by the market administrator.

(d) Each handler operating a plant described in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another

order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

10. In § 1011.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1011.62 Obligations of handler operating a partially regulated distributing plant.

(a) *

(1) (i) The obligation that would have been computed pursuant to § 1011.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1011.70(e) and a credit in the amount specified in § 1011.94(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total

and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. Section 1011.93 is revised to read as follows:

§ 1011.93 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1011.61, 1011.62, 1011.94, and 1011.96 and out of which he shall make all payments pursuant to §§ 1011.95 and 1011.96: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1011.99, paragraphs (a) and (d) are revised to read as follows:

§ 1011.99 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time,

files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. Sections 1012.7, 1012.9, and 1012.10 are revised to read as follows:

§ 1012.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk), filled milk, flavored milk, or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers or a product which contains six percent or more nonmilk fat (or oil).

§ 1012.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A or filled milk is shipped during the month to a pool plant.

§ 1012.10 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) specified in paragraph (a) or (b) of this section:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

2. Section 1012.11 is revised to read as follows:

§ 1012.11 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1012.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which

fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

3. A new § 1012.19a is added and reads as follows:

§ 1012.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

4. In § 1012.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1012.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler pursuant to § 1012.13 (d) or (e)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes, showing separately the in-area disposition of filled milk; and

(2) For a handler pursuant to § 1012.13(b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes; and

5. In § 1012.33, paragraphs (b) and (c) are revised to read as follows:

§ 1012.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

6. In § 1012.45(a), subparagraphs (2), (3), (6), and (9) and the introductory text of subparagraph (10) are revised to read as follows:

§ 1012.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the

pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1012.41 (c) (4) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or a Class II product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk, from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified below) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class III or Class II utilization was requested by the operator of such plant and the handler;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from

unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) and (6) (i) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (v) and (6) (ii) of this paragraph:

7. In § 1012.62, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1012.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1012.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant, and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1012.60(e) and a credit in the amount specified in § 1012.74(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1012.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1012.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and

butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class III price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

8. A new §1012.63 is added and reads as follows:

§ 1012.63 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to Class I disposition in this marketing area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

9. Section 1012.73 is revised to read as follows:

§ 1012.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1012.62, 1012.63, and 1012.74 and out of which he shall make all payments from such fund pursuant to § 1012.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

10. In § 1012.80, paragraph (a) is revised to read as follows:

§ 1012.80 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this

section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such two-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1013—MILK IN THE SOUTH-EASTERN FLORIDA MARKETING AREA

1. Sections 1013.7 and 1013.10 are revised to read as follows:

§ 1013.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk), filled milk, flavored milk or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers, a product which contains 6 percent or more nonmilk fat (or oil), or milkshake mix.

§ 1013.10 Pool plant.

"Pool plant" means a plant (except an other order plant or the plant of a producer-handler) that is specified in paragraph (a) or (b) of this section and which is not a facility described in paragraph (c) of this section:

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products, except filled milk, received at the plant during the month is disposed of on routes except as filled milk and not less than 10 percent of such receipts is disposed of in the marketing area on routes except as filled milk.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section.

(c) Pool plant as defined in this section shall not be deemed to include any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

2. In § 1013.11, the introductory text is revised to read as follows:

§ 1013.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

3. Section 1013.12 is revised to read as follows:

§ 1013.12 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to § 1013.41(a), but does not include delivery to a milk or filled milk receiving or processing plant.

4. Section 1013.14 is revised to read as follows:

§ 1013.14 Producer-handler.

"Producer-handler" means any person who, during the month:

(a) Produces milk;

(b) Distributes Class I milk on routes in the marketing area;

(c) Uses no nonfluid milk products for reconstitution into fluid milk products; and

(d) Receives no milk except from his own dairy farm, and receives no products designated as Class I milk pursuant to § 1013.41(a) from pool plants or other sources.

5. A new § 1013.21 is added and reads as follows:

§ 1013.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

6. In § 1013.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1013.30 Report of sources and utilization.

On or before the 7th day after the end of each month, each handler, except a handler pursuant to § 1013.13 (e) or (f), shall report to the market administrator for such month, and for each accounting period in each month, with respect to each plant at which milk is received or at which filled milk is processed or packaged in detail and on forms prescribed by the market administrator, as follows:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat disposed of as Class I

milk on routes entirely outside the marketing area, showing separately the in-area and outside area route disposition of filled milk; and

(2) For a handler pursuant to § 1013.13 (b), the amount of reconstituted skim milk in fluid milk products disposed of in the marketing area on routes;

7. In § 1013.32, paragraph (b) is revised to read as follows:

§ 1013.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

8. In § 1013.46, subparagraphs (4) and (7) and the introductory texts of subparagraphs (2) and (11) in paragraph (a), and paragraph (d) are revised to read as follows:

§ 1013.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (iv) of this paragraph, as follows:

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(ii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iii) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(iv) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(7) Subtract, in the order specified below, from the pounds of skim milk remaining in Class IV, Class III and/or Class II (beginning with Class IV unless otherwise specified) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants and in other source milk from dairy farmers (except that subtracted pursuant to subparagraph (4) of this paragraph);

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, in excess of similar transfers to such plant, if Class III or Class II utilization was requested by the operator of such plant and the handler;

(11) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (iv) and (7) (ii) of this paragraph:

(d) A handler may account for the receipts, utilization and classification of milk and filled milk, at his plant, for periods within a month if he notifies the market administrator in writing of his intention to use such accounting period not later than the end of every accounting period.

9. In § 1013.61, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 1013.61 Plants where other Federal orders may apply.

(c) Any plant which does not dispose of a greater volume of Class I milk, except filled milk, on routes in the Southeastern Florida marketing area than in the marketing area regulated pursuant to such other order.

(d) Each handler operating a plant specified in paragraph (c) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

10. In § 1013.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1013.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1013.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1013.70(e) and a credit in the amount specified in § 1013.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class III price.

11. Section 1013.81 is revised to read as follows:

§ 1013.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made

by handlers pursuant to §§ 1013.61, 1013.62, 1013.82, and 1013.84 and out of which he shall make all payments pursuant to §§ 1013.83 and 1013.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1013.87, paragraph (a) is revised to read as follows:

§ 1013.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the names of such producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1015—MILK IN THE CONNECTICUT MARKETING AREA

1. In § 1015.10, paragraph (a) is revised to read as follows:

§ 1015.10 Producer-handler.

(a) His sole source of supply for fluid milk products (exclusive of that portion thereof which is represented by nonfat solids used in fortification) is his own production and fluid milk products transferred from pool plants. For the purpose of this paragraph, any fluid milk products which were acquired or purchased from a nonpool plant by him, his agent, partner or other associate and which he or such other person caused to be delivered at retail or wholesale outlets (including vending machines) in any Federal marketing area without being first received at his plant shall be included in such person's nonpool source of fluid milk products.

2. In § 1015.15 the introductory text preceding paragraph (a) of the section is revised to read as follows:

§ 1015.15 Plant.

"Plant" means the land and buildings, whether owned or operated by one or more persons, at which are maintained

facilities and equipment for the receiving, handling or processing of milk or milk products (including filled milk), constituting a single operating unit or establishment. The term "plant" does not include:

3. In § 1015.16 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1015.16 Pool plant.

"Pool plant" means any plant specified in paragraph (a) or (b) of this section: *Provided*, That receipts and disposition of filled milk shall be excluded in determining whether a plant has met the conditions for pool plant status.

4. Section 1015.17 is revised to read as follows:

§ 1015.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition exclusive of filled milk in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

5. Section 1015.22 is revised to read as follows:

§ 1015.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, filled milk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 12 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk in either plain or sweetened form, and any product which contains 6 percent or more nonmilk fat (or oil). Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

6. In § 1015.25 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1015.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

7. Section 1015.29 is added to read as follows:

§ 1015.29 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1015.55 paragraph (b)(3) is revised to read as follows:

§ 1015.55 Assignment to classes of skim milk and butterfat received.

(b) * * *

(3) Filled milk from any source (exclusive of receipts from other pool plants and regulated plants under other Federal orders with marketwide pools) which is not proved to have been made from other fresh fluid milk products and any other fluid milk products from producer-handlers under any Federal order, from exempt governmental agencies, or from exempt distributing plants under any New England Federal order in sequence beginning with the source most distant from Hartford according to its zone location;

9. In § 1015.63 paragraphs (e) and (f) are revised to read as follows:

§ 1015.63 Value of each handler's fluid milk products.

(e) Multiply by the applicable Class I price the quantities of:

(1) Pool milk under § 1015.25 (e) and (f) distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(f) Multiply by the applicable Class II price the quantities of:

(1) Other source milk assigned to Class I milk under § 1015.55(b) (1) and (2);

(2) Other source milk assigned to Class I milk under § 1015.55(b) (3) and (4) and (d); and

(3) Product for which a value is determined under subparagraph (e) (2) of this section.

10. In § 1015.87 subparagraph (b) is revised to read as follows:

§ 1015.87 Payment of administration expense.

(b) The payment shall also apply to the quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1015.63(e), to the quantity of producer milk for which a cooperative association is the handler under § 1015.9(c), and to the quantity of producer milk for which the

cooperative association is the handler under § 1015.9(d), except that disposed of to pool plants or in ending inventory for the month.

11. In § 1015.94 paragraphs (a) and (d) are revised to read as follows:

§ 1015.94 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate two years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in the obligation, unless within the two-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of the producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which the handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund is on the payment is claimed, unless the handler, within the applicable period of time, files a petition under section 8c(15) (A) of the Act, claiming the money.

PART 1016—MILK IN THE UPPER CHESAPEAKE BAY MARKETING AREA

1. Section 1016.3 is revised to read as follows:

§ 1016.3 Definitions of plants.

(a) "Plant" means the land, buildings, surroundings, facilities and equipment operated by one or more persons, constituting a single operating unit or establishment for the receiving (other than transfer from one vehicle to another), processing or packaging of milk or milk products (including filled milk).

(b) "Pool plant" means a plant specified in subparagraph (1), (2), (3), or (4) of this paragraph that is neither a producer-handler plant nor a plant of a

handler pursuant to § 1016.2(g)(5): *Provided*, That any plant qualified as a pool plant pursuant to subparagraph (2) of this paragraph in each of the months of October through February shall be a pool plant for the immediately following months of March through September unless the handler gives written notice to the market administrator on or before the first day of any such month(s) (March through September) that the plant is a nonpool plant for the remaining months through September; *And provided further*, That any such plant specified in subparagraph (2) of this paragraph which was a nonpool plant during any month of October through February shall not be a pool plant in any of the immediately following months of March through September in which it is operated by the same handler, an affiliate of the handler or by any person who controls or is controlled by the handler.

(1) A plant which during the month disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 10 percent of its total receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) and which disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of such receipts.

(2) A plant in any month of October through February in which a quantity of milk equal to not less than 50 percent, and in any month of March through September in which a quantity of milk equal to not less than 40 percent, of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) is moved to a plant(s) which disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 10 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) and from other plants and which disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of such receipts: *Provided*, That in the case of a handler operating a pool plant qualified pursuant to subparagraph (1) of this paragraph and two or more plants approved by the appropriate health authority in the marketing area as a source of supply for such plant, such supply plants shall be considered as a unit (system) for purposes of plant qualification under this paragraph upon written notice to the market administrator by the handler designating the plants to be included and the period during which such designation shall apply. Such notice or notice of changes in designation shall be given on or before the first day of the first month to which such notice applies.

(3) A manufacturing plant, located in the marketing area, from which any

fluid milk product is moved to a plant which is a pool plant pursuant to subparagraphs (1) and (4) of this paragraph if during the month not less than 90 percent of its receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) are from Baltimore City permit holders who are members of a cooperative association of which 70 percent or more of the members are producers whose milk is received at other pool plants.

(4) A plant which disposes of as Class I milk, except filled milk, on routes in the marketing area a quantity equal to not less than 5 percent of its total receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1016.2(g)(4)) and disposes of a quantity of milk equal to not less than 10 percent of such receipts either in such route disposition in the marketing area, or in quantities of skim milk and butterfat in the form of fluid milk products transferred or diverted to nonpool plants which dispose of such skim milk and butterfat on routes in the marketing area as Class I milk (considering such route disposition by each nonpool plant to be supplied out of such fluid milk products transferred or diverted to the nonpool plant to the extent that the skim milk and butterfat in the route disposition could have been so derived): *Provided*, That the plant herein qualified as a pool plant disposes of as Class I milk, except filled milk, a quantity equal to not less than 50 percent of its receipts of milk from dairy farmers; *And provided further*, That all plants as described in this subparagraph are operated by the same handler.

(c) "Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(1) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(2) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) "Partially regulated distributing plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1016.2(g)(5) and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month; and

(4) "Unregulated supply plant" means a nonpool plant that is neither a producer-handler plant, an other order plant nor a plant of a handler pursuant to § 1016.2(g)(5) and from which fluid milk products are shipped to a pool plant.

2. In § 1016.4, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 1016.4 Definitions of milk and milk products.

(a) "Fluid milk product" means milk, skim milk (including concentrated, reconstituted and fortified milk and skim milk) buttermilk, filled milk, milk drinks (plain or flavored) and (except eggnog, milk shake mix, ice cream mix, evaporated and plain or sweetened condensed milk or skim milk, sterilized products in hermetically sealed containers, and any product which contains 6 percent or more nonmilk fat (or oil)) any mixture in fluid form of cream and milk or skim milk containing less than 12 percent butterfat, and 50 percent of the quantity by weight of any such mixture containing at least 12 percent but less than 18 percent butterfat.

(f) "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of non-fat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

3. In § 1016.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1016.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area.

(b) Each handler specified in § 1016.2 (g) (2) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that milk approved for fluid consumption by the appropriate health authority received from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

3a. In § 1016.32, paragraph (b) is revised to read as follows:

§ 1016.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

4. In § 1016.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1016.44 Transfers.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products

shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

5. In § 1016.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1016.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (vi) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which approval by a duly constituted health authority for fluid disposition is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from a handler pursuant to § 1016.2 (g) (5);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products for which the handler requests Class II utilization which were received from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating the plant, and from dairy farmers who are not producers that were not subtracted pursuant to subparagraph (3) of this paragraph, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and

priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraph (3) and (4) (i) of this paragraph, to the extent that the total of such receipts are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1016.2 (g) (4) and in receipts in bulk from other order plants classified and priced pursuant to the applicable order that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in other source milk in the form of fluid milk products from unregulated supply plants, from other order plant(s) if not classified and priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph;

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (vi) of this paragraph, in excess of similar transfers to such plant if classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, from other order plant(s) if not classified or priced pursuant to the order regulating such plant, and from dairy farmers who are not producers, that were not subtracted pursuant to subparagraphs (3) (v), (3) (vi), (4) (i), or (4) (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from other order plants (except receipts from other order plant(s) not classified and priced pursuant to the order regulating such plant), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(vi) or (4)(iii) of this paragraph pursuant to the following procedure:

6. Section 1016.61 is revised to read as follows:

§ 1016.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all provisions of this part except as specified in paragraphs (c) and (d) of this section.

(a) Any plant qualified pursuant to § 1016.3(b) (1) or (4) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in this marketing area than in a marketing area pursuant to such other order.

(b) Any plant qualified pursuant to § 1016.3(b) (2) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the first proviso in § 1016.3(b) for each month during the preceding October through February.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1016.30 and 1016.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the

end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

7. In § 1016.62, paragraph (a) (1) (i) and (b) are revised to read as follows:

§ 1016.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1016.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1016.70(e) and a credit in the amount specified in § 1016.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

8. Section 1016.83 is revised to read as follows:

§ 1016.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1016.61, 1016.62, 1016.84, and 1016.86 and out of which he shall make all payments pursuant to §§ 1016.85 and 1016.86; *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

9. In § 1016.89, paragraphs (a) and (d) are revised to read as follows:

§ 1016.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c), terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant

to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

1. Section 1030.7 is revised as follows:

§ 1030.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet cream, and any mixture in fluid form of such products, including filled milk. It also includes sour cream and sour cream products which are labeled Grade A. Eggnog, including custards and puddings, ice cream mix, frozen dessert mix, yogurt, aerated cream products, evaporated and condensed milk or skim milk and sterilized products in hermetically sealed containers shall not be fluid milk products pursuant to this section. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1030.11 is revised as follows:

§ 1030.11 Pool plant.

"Pool plant" means a plant at which milk is received from dairy farmers, a facility at which milk received from farms in a tank truck is commingled with other milk for further shipment, or a plant at which milk is processed and packaged or manufactured, which plant or facility is described in paragraph (a), (b), or (c) of this section (except an other order plant or the plant of a producer-handler or an exempt distributing plant). If a portion of the plant is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition and is physically separated from the Grade A portion, such unapproved portion shall not be considered a part of the pool plant.

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in subparagraphs (2) and (3) of this paragraph of the receipts specified in subparagraph (1). Two or more distributing plants of a handler shall be considered a unit for the purpose of subparagraph (3) of this paragraph in any month if the handler operating such plants has filed a written request with the market administrator prior to such month requesting that they be considered a unit.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted under § 1030.16, but excluding receipts of fluid milk products from other pool distributing plants and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.46(a)(4)(i) (a) and (ii) and the corresponding step of § 1030.46(b).

(2) Not less than 10 percent of such receipts is disposed of from such plant in the marketing area in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants from which it is disposed of in the marketing area on routes. Such

disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Not less than 45 percent of such receipts is disposed of in the form of packaged fluid milk products, except filled milk, either on routes or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant, or a facility at which milk received from farms in a tank truck is commingled with other milk for further shipment, from which the quantity of fluid milk products, except filled milk, moved during the month in accordance with subparagraphs (1), (2), and (3) of this paragraph is not less than the percentages specified in subparagraphs (4) and (5) of this paragraph subject to subparagraphs (6), (7), and (8) of this paragraph, of the volume of Grade A milk received from dairy farmers at such plant or facility, including producer milk diverted under § 1030.16.

(1) To pool plants pursuant to paragraph (a) of this section;

(2) To plants of producer-handlers;

(3) To partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.44(d)(3)(i);

(4) Such percentages shall be not less than 40 percent in each of the months of September, October, and November and 30 percent in all other months, except that a plant which is a pool plant pursuant to this paragraph during each of the months of August through December shall be a pool plant for each of the following months of January through July unless:

(i) The milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area; or

(ii) Written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting the plant be designated a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(5) Reserved.

(6) The percentages specified in subparagraph (4) of this paragraph applicable during the months August-December shall be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if he finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision either on his own initiative or at the request of interested persons and if his investigation shows that a revision might be appropriate he shall issue a notice stating that revision is being considered and inviting data, views, and arguments with respect to the proposed revision: *Provided*, That if a plant which would not otherwise qualify as a pool plant during the month pursuant to sub-

paragraph (4) of this paragraph would qualify as a pool plant as a result of this subparagraph, such plant shall be a nonpool plant for such month upon filing by the operator of such plant a written request for nonpool status with the market administrator.

(7) Two or more plants shall be considered a unit for the purpose of this paragraph if the following conditions are met:

(i) The plants included in a unit are owned or fully leased and operated by the handler establishing the unit. In the case of plants operated by cooperative associations two or more cooperative associations may establish a unit of designated plants by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives;

(ii) The handler or cooperatives establishing a unit notify the market administrator in writing of the plants to be included therein prior to August 1 of each year and no additional plants shall be added to the unit prior to August 1 of the following year; and

(iii) The notification pursuant to subdivision (ii) of this subparagraph shall list the plants in the order in which they shall be excluded from the unit if the minimum shipping requirements are not met, such exclusion to be in sequence beginning with the first plant on the list and continuing until the remaining plants as a unit have met the minimum requirements.

(8) If, during August through December a handler notifies the market administrator in writing that a plant is unable to meet the requirements set forth herein because of a work stoppage due to a labor dispute between employer and employees, the market administrator, upon verification of the handler's claim, shall not include the receipts and utilization of skim milk and butterfat at such plant for those days from the date of notification through the last day of the work stoppage in determining the percentage of skim milk and butterfat shipped pursuant to this paragraph. When the work stoppage includes an entire month, the plant shall be considered to have met the minimum percentage shipping requirements in that month for pool plant status pursuant to this paragraph, but such relief shall not be granted for more than two consecutive months.

(c) A plant which is operated by a cooperative association and which is not a pool plant pursuant to paragraph (a) or (b) of this section shall be a pool plant if at least 50 percent of the Grade A milk of producers of such cooperative association is received at pool distributing plants of other handlers during the month and written application for pool plant status is filed with the market administrator on or before the first day of such month.

3. Section 1030.12 is revised as follows:

§ 1030.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk

from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1030.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant and from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

4. A new § 1030.19 is added as follows:

§ 1030.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1030.30, paragraph (b) is revised as follows:

§ 1030.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat disposed of as Class I milk inside and outside marketing area on routes, and a statement showing separately in-area and outside area route disposition of filled milk; and

6. In § 1030.31, paragraphs (a) and (c) are revised as follows:

§ 1030.31 Other reports.

(a) Each producer-handler shall report the receipts and disposition of skim milk and butterfat at such plant at such time and in such manner as the market administrator may require and shall al-

low verification of such reports by the market administrator.

(c) Each handler operating a partially regulated distributing plant shall report for each such plant the information required of pool plant operators pursuant to § 1030.30 substituting receipts from dairy farmers for producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. In § 1030.32, paragraphs (b) and (c) are revised as follows:

§ 1030.32 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

8. In § 1030.44, paragraph (e) (5) is revised as follows:

§ 1030.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk and skim milk and butterfat allocated to the other classes shall be classified as Class II; and

9. Section 1030.46 is revised as follows:

§ 1030.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1030.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified as Class II milk pursuant to § 1030.41(b) (7) and (9);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant in excess in each case of similar transfers to the same plant, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk re-

maining in each class, in series beginning with Class II milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products which are from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order and from an exempt distributing plant;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another marketwide pool order.

(4) Subtract, in the order specified below from the pounds of skim milk remaining in Class II milk but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II milk utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers (or other pool plants, if applicable), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(ii) Receipts of fluid milk products, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in bulk, including diversions from an other order plant in excess of similar transfers and diversions to such plant, if Class II milk utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess

in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (d)(ii) of this paragraph;

(1) In series beginning with Class II milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II milk utilization of skim milk announced for the month by the market administrator pursuant to § 1030.22(k) or the percentage that Class II milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

(11) From Class I milk, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1030.44(a); and

(10) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage"; and

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

10. Section 1030.60 is revised as follows:

§ 1030.60 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to § 1030.31 the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1030.70 (a) through (e) at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1030.70(e) and a credit in

the amount specified in § 1030.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1030.31 similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1030.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (1) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (11) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:
(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I milk price (after deducting the location adjustment rate for the zone in which the nonpool plant is located) subtract its value at the uniform price at the same location or at the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. A new § 1030.61 is added as follows:

§ 1030.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to an other order plant as defined in § 1030.12(a) except as specified in

paragraphs (a) and (b) of this section.

(a) Each handler operating a plant described in § 1030.12(a) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1030.30 and 1030.31) and allow verification of such reports by the market administrator.

(b) Each handler operating a plant subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. Section 1030.83 is revised as follows:

§ 1030.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund and out of which he shall make all payments from such fund pursuant to §§ 1030.60, 1030.61, 1030.84, 1030.85, and 1030.86: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1030.89, paragraphs (a) and (d) are revised as follows:

§ 1030.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraph (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to, the following:

(1) The amount of the obligation;
(2) The months during which the skim milk and butterfat, with respect to

which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. In § 1032.12, paragraphs (a) and (b) are revised to read as follows:

§ 1032.12 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1032.61, from which during the month:

(1) Disposition of fluid milk products, except filled milk, in the marketing area on routes is equal to 10 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1032.9(d), or from which an average of not less than 7,000 pounds per day of fluid milk products, except filled milk, is distributed on routes in the marketing area; and

(2) Total disposition of fluid milk products, except filled milk, on routes is equal to 50 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1032.9(d) during the months of August through February and 40 percent during all other months;

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 1032.9(d) is moved to and received at a pool plant (as described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months;

2. Section 1032.13 is revised to read as follows:

§ 1032.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further denied as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

3. Section 1032.16 is revised to read as follows:

§ 1032.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or fortified), including "dietary milk products" and reconstituted milk or skim milk, filled milk, concentrated milk not in hermetically sealed containers, cream (sweet or sour), and mixtures of cream and milk or skim milk, but not including the following: Aerated cream products, frozen storage cream, sour cream and sour cream mixtures not labeled Grade A, egg-nog, yogurt, frozen dessert mixes, evaporated or condensed milk, and sterilized fluid milk products in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1032.19a is added to read as follows:

§ 1032.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1032.30, subparagraphs (3) and (5) of paragraph (a) and (c) are revised to read as follows:

§ 1032.30 Reports of receipts and utilization.

(3) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area

and outside area route disposition of filled milk;

(5) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require;

(c) Each handler specified in § 1032.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk; and

6. In § 1032.43, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1032.43 Transfers and diversions.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II;

7. In § 1032.45, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1032.45 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A

certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II;

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II, if Class II utilization was requested by the transferee handler and the operator of the transferor plant requests such utilization;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) and (ii) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (v) or (5) (iii) of this paragraph pursuant to the following procedure;

8. Section 1032.61 is revised to read as follows:

§ 1032.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e).

(a) A distributing plant qualified pursuant to § 1032.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Southern Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(b) A distributing plant qualified pursuant to § 1032.12(a), which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Southern Illinois marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation even though such plant has greater such Class I route disposition in the marketing area of the Southern Illinois order; and

(c) Any plant qualified pursuant to § 1032.12(c) for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require

and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

9. In § 1032.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1032.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1032.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts of such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1032.70(f) and a credit in the amount specified in § 1032.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under

a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher; and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

10. Section 1032.83 is revised to read as follows:

§ 1032.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows: (a) All payments made by handlers pursuant to §§ 1032.61, 1032.62 (a) and (b), 1032.84, and 1032.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.85 and 1032.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and (b) all amounts subtracted pursuant to § 1032.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1032.80 in accordance with the requirements of § 1032.71(d).

11. In § 1032.90, paragraphs (a) and (d) are revised to read as follows:

§ 1032.90 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be completed upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers or if the obligation is payable to the market

administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1033—MILK IN THE GREATER CINCINNATI MARKETING AREA

1. Section 1033.9 is revised to read as follows:

§ 1033.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler, but who receives no fluid milk products from other dairy farmers or from sources other than pool plants and no nonfluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the maintenance, care and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled is the personal enterprise of and at the personal risk of such person in his capacity as a dairy farmer, and (b) the operation of a distributing plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

2. Section 1033.10 is revised to read as follows:

§ 1033.10 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which contains stationary milk holding facilities and is operated exclusively for the bulk handling or processing of milk or milk products (including filled milk). The term "plant" does not include distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants).

3. In § 1033.13, paragraphs (a) and (b) are revised to read as follows:

§ 1033.13 Pool plant.

(a) A distributing plant with:
(1) Route disposition, except filled milk, within the marketing area during the month of at least 15 percent of its total route disposition, except filled milk, such percentage to be exclusive of receipts from other plants of packaged

fluid milk products priced as Class I milk under this or any other Federal order; and

(2) Total route disposition, except filled milk, amounting to not less than 50 percent of its total receipts of Grade A milk from dairy farmers, other plants (excluding receipts of bulk fluid milk products transferred or diverted to it as Class II milk from other plants), and cooperatives as handlers pursuant to § 1033.8 (but excluding any such milk diverted from such plant to a nonpool plant by the cooperative pursuant to § 1033.15(c)). Any plant which complies with such percentage requirement during the immediately preceding month shall continue to be a pool plant during the current month even if the minimum percentage requirement under this subparagraph is not met for the current month.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, shipped directly to and received at plants qualified pursuant to paragraph (a) of this section and route disposition, except filled milk, from such plant within the marketing area, if any, is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (excluding receipts from other plants or as a diversion pursuant to § 1033.15). Any supply plant which meets the required percentage of this paragraph during each of the months of September through February shall continue to be so qualified for the following months of March through August, unless such operator in writing requests nonpool plant status for such plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant requalifies under this section on the basis of shipments.

4. Section 1033.14 is revised to read as follows:

§ 1033.14 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area during the month of fluid milk products in consumer-type packages or dispenser units.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

5. Section 1033.16 is revised to read as follows:

§ 1033.16 Fluid milk product.

Except as provided in paragraph (c) of this section, "fluid milk product" means the fluid form of:

(a) Milk, skim milk, buttermilk, flavored milk, milk drink, whipped cream, cream (sweet or sour), eggnog, concentrated milk, filled milk; and

(b) Any mixture of milk, skim milk or cream including fluid, frozen, or semi-frozen malted milk and milk shake mixtures containing less than 15 percent total milk solids.

(c) Excluded from this definition are: Frozen storage cream, aerated cream in dispensers, ice cream and frozen dessert mixes, pancake mix, evaporated and condensed milk, and any sour mixture of skim milk and butterfat in nonfluid form to which cheese or any food substance other than a milk product has been added and which is disposed of as other than sour cream. Also excluded is any product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1033.19a is added to read as follows:

§ 1033.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavorings) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1033.30, paragraph (a) is revised to read as follows:

§ 1033.30 Monthly reports of receipts and utilization.

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk, including own farm production and quantities diverted to nonpool plants;

(2) Fluid milk products received from other pool plants;

(3) Other source milk, with the identity of each source;

(4) Inventories of fluid milk products on hand at the beginning and end of the month in bulk and in packaged form, separately;

(5) Route disposition (except filled milk) inside the marketing area; and

(6) Route disposition of filled milk inside the marketing area;

8. In § 1033.31, paragraph (b) is revised to read as follows:

§ 1033.31 Other reports.

(b) Each handler specified in § 1033.8 (d) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1033.30 (a) through (c), except dairy farmer receipts of Grade A milk shall be reported in lieu of producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk

products disposed of as route disposition in the marketing area; and

9. Section 1033.33 is revised to read as follows:

§ 1033.33 Records and facilities.

Each handler required to make reports to the market administrator shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of his operations and such facilities as are necessary for the market administrator to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat, and for other content, of all milk and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

9a. In § 1033.41(b) (1), a new subdivision (vii) is added and reads as follows:

§ 1033.41 Classes of utilization.

(b) * * *

(1) * * *

(vii) Any product which contains 6 percent or more nonmilk fat (or oil);

10. In § 1033.43(d), subparagraph (5) is revised to read as follows:

§ 1033.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1033.46(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1033.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, but not

in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(8) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4) (iv) and (5) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (v) and (5) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be prorata to whichever of the following represents the higher proportion of all Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1033.22 (k); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse

direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

12. In § 1033.61, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1033.61 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1033.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1033.60 (e) and a credit in the amount specified in § 1033.72 (b) with respect to receipts from an unregulated supply plant except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. In § 1033.71, paragraph (a) is revised to read as follows:

§ 1033.71 Producer-settlement fund.

(a) All payments made by handlers pursuant to §§ 1033.61 (a) and (b), 1033.72, and 1033.92 shall be deposited in this fund, and all payments made pursuant to § 1033.73 shall be made out of this fund;

14. In § 1033.78, paragraphs (a) and (d) are revised to read as follows:

§ 1033.78 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part, shall terminate 2 years after the end of the calendar month during which skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

15. Section 1033.92 is revised to read as follows:

§ 1033.92 Plants subject to other Federal orders.

(a) The provisions of this part shall not apply, except as specified in paragraphs (b) and (c) of this section, to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1033.13 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area on

routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area and to pool plants regulated pursuant to such other order during the current month and each of the 3 months immediately preceding.

(b) The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a distributing plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

PART 1034—MILK IN THE MIAMI VALLEY, OHIO, MARKETING AREA

1. Section 1034.10 is revised to read as follows:

§ 1034.10 Plant.

"Plant" means the land and buildings together with their surroundings, facilities, and equipment constituting a single operating unit or establishment which is operated exclusively by one or more persons and used for the bulk handling or processing of milk or milk products (including filled milk).

2. In § 1034.13, paragraphs (a) and (b) are revised to read as follows:

§ 1034.13 Pool plant.

(a) A distributing plant from which during the month:

(1) Route disposition (except filled milk) made within the marketing area is at least 15 percent of its total route disposition (except filled milk); and

(2) At least 50 percent of the total receipts of Grade A milk at such plant from dairy farmers, other plants (excluding receipts of bulk fluid milk products from

other plants which are assigned as Class II milk pursuant to § 1034.45(a) (5) (i) and (iii) and (10)), and cooperatives as handlers pursuant to § 1034.8, including any such milk diverted to other plants pursuant to § 1034.15 by the handler operating such plant, is route disposition (except filled milk) during each of the months of August through January, at least 45 percent February and March, and at least 40 percent during other months, except that a plant which qualifies as a pool plant by complying with the preceding requirements of this subparagraph during the immediately preceding month shall continue to be a pool plant during the current month even if the minimum percentage requirement for the current month is not met.

(b) A supply plant from which during the month the volume of fluid milk products (except filled milk) shipped to and received at plants qualified pursuant to paragraph (a) of this section and route disposition (except filled milk) from such plant within the marketing area, if any, is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (including receipts from a handler pursuant to § 1034.8(c) but not receipts of other milk on diversion pursuant to § 1034.15). Any supply plant which is qualified by reason of meeting the required percentage of this paragraph during the months of August through March shall continue to be so qualified for the following months of April through July even if the required percentage pursuant to this paragraph is not met in the latter months, unless such operator requests the market administrator in writing that such plant should not be so qualified, such revised status to be effective the first month following such notice and thereafter until the plant requalifies under this section on the basis of shipments.

3. In § 1034.14, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1034.14 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

4. Section 1034.16 is revised to read as follows:

§ 1034.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored or cultured milk or skim milk, filled milk, buttermilk, concentrated milk, sweet or sour cream, and any fluid mixture of cream and milk or skim milk, including prepared milk shake mixes containing less than 15 percent total milk solids. The term includes these products in fluid, frozen (except cream), fortified or reconstituted form, but does not include sterilized cream in hermetically sealed metal or glass containers, eggnog, ice cream mix, or other frozen dessert mixes, aerated cream products, storage cream, cultured sour mixtures disposed

of as other than sour cream unless labeled as a Grade A product, evaporated or condensed milk or skim milk in either plain or sweetened form, and a product which contains 6 percent or more non-milk fat (or oil).

5. A new § 1034.19 is added to read as follows:

§ 1034.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1034.30, paragraphs (a) (3) and (c) are revised to read as follows:

§ 1034.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all receipts required to be reported, including separate data relative to:

(i) Bulk fluid milk products on hand at the end of the month;

(ii) Packaged fluid milk products on hand at the end of the month;

(iii) Route disposition (except filled milk), inside and outside the marketing area; and

(iv) Route disposition of filled milk inside and outside the marketing area; and

(c) Each handler who operates a partially regulated distributing plant shall report for such plant the information required by paragraph (a) of this section, except that receipts of milk approved by any duly constituted health authority for fluid consumption in the marketing area shall be reported as if producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

7. Section 1034.33 is revised to read as follows:

§ 1034.33 Records and facilities.

Each handler, including any partially regulated handler, shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) Receipts of producer milk and other source milk and the utilization of such receipts at each of his plants;

(b) Weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month at each plant; and

(d) Payments to producers, other dairy farmers, and cooperative associations including the amount and nature of any deductions made and the disbursement of money so deducted.

8. In § 1034.43(d), subparagraph (5) is revised to read as follows:

§ 1034.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1034.45(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1034.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (vi) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract successively from the pounds of skim milk remaining in each class in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product, provided that any such milk received as cottage cheese curd shall be subtracted directly from the handler's cottage cheese utilization;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from a plant exempt pursuant to § 1034.60(b);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, for which the handler requests Class II utilization (other than cottage cheese manufacture) but not in excess of the pounds of skim milk remaining in such Class II uses;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such pool plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (vi) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph;

(2) Should such computation result in a quantity to be subtracted from Class II, which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (vi) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(8) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4) (v) and (5) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received,

the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (vi) and (5) (iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of all Class II milk.

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1034.22(I); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

10. Section 1034.61 is revised to read as follows:

§ 1034.61 Plants subject to other Federal orders.

The provisions of this part shall not apply except as specified in paragraphs (c) and (d) of this section:

(a) A distributing plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant pursuant to § 1034.13(a) and a greater volume of

fluid milk products (except filled milk) is disposed of from such plant to retail or wholesale outlets in the Miami Valley, Ohio, marketing area and to pool plants under this part than in the marketing area and to pool plants regulated by such other order during the current month and each of the 3 months immediately preceding.

(b) A supply plant meeting the requirements of § 1034.13(b) which also continues to have pool plant status under another Federal order.

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1034.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1034.62 Obligation of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1034.70 had such plant been a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant, transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order is so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1034.70(f) and a

credit in the amount specified in § 1034.84 (b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. Section 1034.83 is revised to read as follows:

§ 1034.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1034.61, 1034.62, 1034.84, and 1034.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1034.85 and 1034.86, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1034.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1034.80 in accordance with the requirements of § 1034.71(d).

13. In § 1034.100, paragraphs (a) and (d) are revised to read as follows:

§ 1034.100 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the han-

dler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1035—MILK IN THE COLUMBUS, OHIO, MARKETING AREA

1. Section 1035.7 is revised to read as follows:

§ 1035.7 Fluid milk product.

"Fluid milk products" means the fluid form of milk, skim milk, filled milk, buttermilk, concentrated milk, milk drinks (plain or flavored including dietary milk, prepared milk shake mixes containing 15 percent or less of total milk solids and egg nog), sweet or sour cream, or any mixture in fluid form of milk, skim milk or cream (except storage cream, aerated cream products, ice cream mix, cultured sour mixtures which are not labeled "Grade A", evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1035.8 is revised to read as follows:

§ 1035.8 Route.

"Route" means a delivery (including a sale from a plant store) of a fluid milk product(s) to a wholesale or retail stop(s) other than to a milk or filled milk plant(s) or to a food processing plant(s) for use other than for fluid consumption.

3. Section 1035.9 is revised to read as follows:

§ 1035.9 Fluid milk plant.

"Fluid milk plant" means a plant or other facilities which are used in the

receipt, preparation, or processing of milk which is approved by a duly constituted health authority for fluid disposition as Grade A milk of filled milk and all or a portion of such milk of filled milk is:

- (a) Disposed of during the month in the form of a fluid milk product(s) in the marketing area on a route(s); or
- (b) Moved to a plant described in paragraph (a) of this section in the form of a fluid milk product(s).

4. In § 1035.10, paragraphs (a) and (b) are revised to read as follows:

§ 1035.10 Pool plant.

(a) Any fluid milk plant from which the volume of Class I milk, except filled milk, disposed of on a route(s) is equal to not less than 50 percent of the Grade A milk described in § 1035.12(a) received at such plant from dairy farmers and from other plants during the month and more than 15 percent of such receipts are disposed of as Class I milk, except filled milk, on routes in the marketing area: *Provided*, That the 50 percent requirement of this paragraph shall apply only during the months of January, February, October and November to a fluid milk plant which operates routes all of which service only the Campus of Ohio State University, Columbus, Ohio; or

(b) Any fluid milk plant which receives milk from dairy farmers described in § 1035.12(a) and from which fluid milk products, except filled milk, equal to not less than 50 percent of the milk received at such plant from such dairy farmers during the month is moved to a plant(s) described in paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such plant during the immediately preceding period of August through November, such plant shall, unless written application for nonpool plant status is received by the market administrator from the operator of such plant on or before March 1 of any year, be designated as a pool plant for the months of March through July of such year.

5. In § 1035.11, the introductory text immediately preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1035.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler

plant, from which milk, skim milk, filled milk, or cream is shipped to a pool plant.

6. Section 1035.15 is revised as follows:

§ 1035.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on a route in the marketing area and who receives no fluid milk products from other dairy farmers or nonpool plants and no non-fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

7. A new § 1035.19 is added to read as follows:

§ 1035.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1035.30, paragraph (b) is revised to read as follows:

§ 1035.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported by each handler pursuant to this section, including separate statements of his disposition of fluid milk products (except filled milk) and filled milk on routes in the marketing area.

9. In § 1035.31, paragraph (b) is revised to read as follows:

§ 1035.31 Other reports.

(b) Each handler specified in § 1035.14 (c) who operates a partially regulated distributing plant shall report as required pursuant to § 1035.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include separate statements showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the amount of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area: *Provided*, That a handler making payments pursuant to § 1035.63(b) need not report payments pursuant to § 1035.30(d) to dairy farmers.

10. Section 1035.32 is revised to read as follows:

§ 1035.32 Records and facilities.

Each handler and producer-handler shall maintain and make available to the market administrator, his agent, or such other person as the Secretary may designate, during the usual hours of business, such accounts and records of his operations and such facilities, as, in the opinion of the market administrator, are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat handled, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat and for other contents, of all milk and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

11. In § 1035.43(e), subparagraph (5) is revised to read as follows:

§ 1035.43 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1035.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1035.46 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim

milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another marketwide pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from another order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from another order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) and (4)(ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1035.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

13. In § 1035.63, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1035.63 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1035.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which clas-

sified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1035.60(e) and a credit in the amount specified in § 1035.71(c) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

14. Section 1035.64 is revised to read as follows:

§ 1035.64 Plants subject to other Federal orders.

(a) The provisions of this part, except paragraph (b) of this section, shall not apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1035.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Columbus, Ohio, marketing area to retail or wholesale outlets and other pool plants than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a plant which is exempted from the provisions of

this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

15. Section 1035.70 is revised to read as follows:

§ 1035.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1035.64 and 1035.71 shall be deposited in this fund, and all payments made pursuant to § 1035.72 (a) and (b) shall be made out of this fund; and

(b) All amounts subtracted pursuant to § 1035.61(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1035.72 in accordance with the requirements of § 1035.61(i).

16. In § 1035.92, paragraphs (a) and (d) are revised to read as follows:

§ 1035.92 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;
(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation, is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is revised to read as follows:

§ 1036.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, cream, and mixtures of such cream or milk and skim milk.

2. Sections 1036.9 and 1036.10 are revised to read as follows:

§ 1036.9 Distributing plant.

"Distributing plant" means a plant in which:

(a) Milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has route disposition in the marketing area during the month; or

(b) Filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1036.10 Supply plant.

"Supply plant" means a plant from which:

(a) A fluid milk product acceptable to a duly constituted health authority is transferred or diverted during the month to a pool plant; or

(b) Filled milk is transferred during the month to a pool plant.

3. Section 1036.11 is revised to read as follows:

§ 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 per-

cent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1036.16 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of such receipts.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40 percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption physically received (including that diverted from other plants) at such plant from dairy farmers and handlers pursuant to § 1036.13(d) or diverted as producer milk pursuant to § 1036.16 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

4. In § 1036.12, the introductory text and paragraph (a) are revised to read as follows:

§ 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c) (2) and (d) (2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of from such plant in the marketing area regulated pursuant to such other order.

5. Section 1036.14 is revised to read as follows:

§ 1036.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no nonfluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

6. A new § 1036.22 is added to read as follows:

§ 1036.22 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk products, and contains less than 6 percent nonmilk fat (or oil).

7. In § 1036.30, the introductory text and paragraph (b) are revised to read as follows:

§ 1036.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler (except a handler pursuant to § 1036.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received or at which filled milk is processed or packaged, reporting in detail and on forms prescribed by the market administrator:

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing:

(1) The respective amounts of skim milk and butterfat in route disposition in the marketing area, showing separately the in-area route disposition of filled milk; and

(2) For a handler pursuant to § 1036.13(b), the amount of reconstituted skim milk in route disposition in the marketing area; and

8. In § 1036.33, paragraphs (b) and (c) are revised to read as follows:

§ 1036.33 Records and facilities.

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

8a. In § 1036.41(b), subparagraphs (1) and (2) are revised to read as follows:

§ 1036.41 Classes of utilization.

(b) * * *

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, a product which contains six percent or more nonmilk fat (or oil), milk shake mix containing not less than 12 percent total milk solids, and sterilized products in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk or filled milk plant) in the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises;

9. In § 1036.43(d), subparagraph (5), is revised to read as follows:

§ 1036.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1036.45(a), subparagraphs (2), (3), (4) and (7), and the introductory text of subparagraph (8) are revised to read as follows:

§ 1036.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1036.41(b)(6) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which appropriate health approval is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraphs (3)(v) and (4)(ii) of this paragraph:

11. In § 1036.62, paragraphs (a)(1) and (b) are revised to read as follows:

§ 1036.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at

the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.74(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1036.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class II price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. A new § 1036.64 is added and reads as follows:

§ 1036.64 Obligation of handler operating an other order plant.

Each handler who operates an other order plant that is regulated under an

order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund, on or before the 25th day after the end of the month, an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to route disposition in this marketing area, at the Class I price applicable at the non-pool plant and subtract its value at the Class II price.

13. Section 1036.73 is revised to read as follows:

§ 1036.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62, 1036.64, and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

14. In § 1036.79, paragraphs (a) and (d) are revised to read as follows:

§ 1036.79 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handlers' utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers; the name of such producers(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part

shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.9 is revised to read as follows:

§ 1040.9 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a milk plant from which fluid milk products are distributed in the marketing area and who received fluid milk products only from his own production or by transfer from a pool plant and no nonfluid milk products for reconstitution into fluid milk products; and

(b) Provides proof that (1) the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant); and (2) the operation of the processing business is the personal enterprise and risk of such person.

2. Section 1040.12 is revised to read as follows:

§ 1040.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, buttermilk, yogurt, filled milk, cream (exclusive of frozen and sour cream), and any mixture in fluid form of cream and milk or skim milk (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3. Section 1040.13 is revised to read as follows:

§ 1040.13 Route.

"Route" means a delivery (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product (except bulk cream) classified as Class I to a wholesale or retail outlet other than a delivery to any milk or filled milk plant.

4. In § 1040.16, paragraph (a) is revised to read as follows:

§ 1040.16 Pool plant.

(a) A distributing plant, other than a producer-handler plant or plants exempt pursuant to § 1040.90 and § 1040.91, from which total distribution of fluid milk products, except filled milk, on routes during the month or during either of the 2 months immediately preceding is

not less than 50 percent of receipts of producer milk and fluid milk products, except filled milk, from supply plants and cooperative associations pursuant to § 1040.7(c).

5. In § 1040.17, paragraphs (a) and (c) are revised to read as follows:

§ 1040.17 Call percentage.

(a) Estimate the aggregate pounds of Class I milk utilization, except filled milk, for the month including an additional 15 percent thereof as an operating margin, at pool distributing plants;

(c) Divide any plus balance of estimated Class I milk, except filled milk remaining by the estimated receipts of producer milk for the month at the supply plants.

6. In § 1040.18, the introductory text immediately preceding paragraph (a) and paragraph (d) are revised to read as follows:

§ 1040.18 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

7. A new § 1040.21 is added to read as follows:

§ 1040.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1040.30, a new paragraph (d) is added and paragraph (b) is revised to read as follows:

§ 1040.30 Monthly reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and a statement showing separately in-area route disposition of filled milk; and

(d) The quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area by each handler specified in § 1040.7(b) who

operates a partially regulated distributing plant.

9. Section 1040.32 is revised to read as follows:

§ 1040.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of all of his operations and such facilities as are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products and filled milk received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk, and other contents of all milk, and milk products (including filled milk) handled; and (c) payments to producers and cooperative associations.

10. In § 1040.43(e), subparagraph (5) is revised to read as follows:

§ 1040.43 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products, shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class III; and

11. In § 1040.46(a), subparagraphs (2), (4), (5), (8), and (9) are revised to read as follows:

§ 1040.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract in the order specified below, from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than a fluid milk product, provided that any such milk received as cottage cheese or cottage cheese curd shall be subtracted directly from the handler's cottage cheese utilization (Class II);

(ii) Receipts of fluid milk products (except filled milk) that are not approved by a duly constituted health authority for fluid consumption in the marketing area and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II or Class III, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph;

(a) For which the handler requests Class III utilization; or

(b) In series beginning with Class III, which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a cooperative association pursuant to § 1040.7(c), receipts from pool plants of other handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the operator of such plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4)(iv) and (5)(i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4)(v) and (5)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1040.27(i) or the percentage that combined Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

12. In § 1040.66, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1040.66 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1040.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III milk (or Class II) if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1040.60(e) and a credit in the amount specified in § 1040.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price pursuant to § 1040.62 at the same location or at the Class III price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

13. Section 1040.83 is revised to read as follows:

§ 1040.83 Producer-equalization fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-equalization

fund" into which he shall deposit all payments received pursuant to §§ 1040.66, 1040.84, and 1040.91, and out of which he shall make all payments pursuant to § 1040.85.

14. Section 1040.91 is revised to read as follows:

§ 1040.91 Handlers subject to other Federal orders.

(a) A handler who operates a plant at which during the month milk is fully subject to the classification, pricing, and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Southern Michigan marketing area shall be exempt for such month from all provisions of this part except §§ 1040.31, 1040.32, and 1040.33 and paragraph (b) of this section.

(b) Each handler operating a pool distributing plant described in § 1040.16(a) that is exempt pursuant to paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

15. In § 1040.100, paragraphs (a) and (d) are revised to read as follows:

§ 1040.100 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's report of utilization of the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative

association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1041—MILK IN THE NORTH-WESTERN OHIO MARKETING AREA

1. Section 1041.9 is revised to read as follows:

§ 1041.9 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives only milk of his own production or fluid milk products which are priced as Class I milk under an order issued pursuant to the Act and no non-fluid milk products for reconstitution into fluid milk products; and

(c) Provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and packaging facilities for fluid milk products are conducted as his personal enterprise and at his own risk.

2. In § 1041.10, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1041.10 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities and equipment constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products (including filled milk). The term "plant" does not include:

3. Section 1041.12 is revised to read as follows:

§ 1041.12 Supply plant.

"Supply plant" means a plant from which milk, skim milk, filled milk or cream is shipped during the month to a plant qualified as a pool plant under § 1041.13(a).

4. In § 1041.13, paragraphs (a) and (b) are revised to read as follows:

§ 1041.13 Pool plant.

(a) A distributing plant with route disposition, except filled milk, during the month, or in 5 of the immediately preceding 6 months, of not less than 50 percent of the total Grade A milk received at such plant from dairy farmers (excluding any such milk received by diversion from a plant at which such milk is fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act), pool supply plants and through reload points, and with at least 15 percent of such route disposition made within the marketing area during the month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is represented in shipments of fluid milk products, except filled milk, to a plant described under paragraph (a) of this section. If a plant meets the above requirement in this paragraph in each of the months of September through December, such plant shall qualify under this paragraph until the end of the following August, unless the plant operator requests nonpool status for such plant; in the latter event nonpool plant status shall be effective the first month following the filing of a request in writing to the market administrator and shall continue until the plant requalifies under this section on the basis of actual shipments.

5. Section 1041.14 is revised to read as follows:

§ 1041.14 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area during the month of fluid milk products in consumer-type packages or dispenser units.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products are shipped to a pool plant.

6. Section 1041.16 is revised to read as follows:

§ 1041.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored or cultured milk or skim milk, buttermilk, concentrated milk, egg-nog, sweet or sour cream, filled milk, and any mixture of fluid cream and milk or skim milk. Cultured sour mixtures disposed of as other than sour cream and

yogurt shall be considered as fluid milk products only if disposed of under a Grade A label. The term includes these products in fluid, frozen (except cream), fortified or reconstituted form, but does not include sterilized products in hermetically sealed containers, and such products as milkshake mix, ice cream mix, and other frozen dessert mixes, aerated cream products, frozen cream, cultured sour mixtures (disposed of as other than sour cream and not disposed of under a Grade A label), pancake mixes, evaporated or sweetened condensed milk, or skim milk in either plain or sweetened form, and a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1041.21 is added to read as follows:

§ 1041.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1041.30, paragraph (f) is revised to read as follows:

§ 1041.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the route disposition of fluid milk products (except filled milk) and filled milk in the marketing area; and

9. In § 1041.31, paragraph (b) is revised to read as follows:

§ 1041.31 Other reports.

(b) On or before the 7th day after the end of each month, each handler who operates a partially regulated distributing plant shall report the information required of handlers operating pool plants pursuant to § 1041.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

10. Section 1041.33 is revised to read as follows:

§ 1041.33 Records and facilities.

(a) Each handler shall maintain detailed and summary records showing all receipts, movements and disposition of milk and milk products (including filled milk) during each month, and the quantities of milk and milk products (including filled milk) in the inventories at the beginning and end of each month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by

this part or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in the reports submitted in accordance with this part;

(2) Weigh, sample and test milk and milk products (including filled milk); and

(3) Make such examination of records, operations, equipment and facilities as the market administrator deems necessary for the purpose specified in this paragraph.

11. In § 1041.44(d), subparagraph (5) is revised to read as follows:

§ 1041.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1041.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1041.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned

under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plants, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any

class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(v) and (4)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1041.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

13. Section 1041.61 is revised to read as follows:

§ 1041.61 Plants subject to other Federal orders.

(a) The provisions of this part except §§ 1041.30, 1041.31, 1041.32, and 1041.33 and paragraph (b) of this section, shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool

plant pursuant to § 1041.13 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Northwestern Ohio marketing area to retail or wholesale outlets and to other pool plants than in the marketing area regulated pursuant to such other order during the current month and each of the three months immediately preceding, unless the Secretary determines that the applicable order should more appropriately be determined on some other basis. The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may request and permit his verification of such reports; and

(b) Each handler operating a distributing plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

14. In § 1041.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1041.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1041.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in

§ 1041.70(e) and a credit in the amount specified in § 1041.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

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(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

15. In § 1041.91, paragraphs (a) and (d) are revised to read as follows:

§ 1041.91 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following:

(1) The amount of the obligation;

(2) The month during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1043—MILK IN THE UPSTATE MICHIGAN MARKETING AREA

1. In § 1043.8, paragraph (a) is revised to read as follows:

§ 1043.8 Pool plant.

(a) A distributing plant other than that of a producer-handler, or one described in § 1043.82 or § 1043.83, from which during the month:

(1) Disposition of fluid milk products, except filled milk, on routes in the marketing area equals or exceeds the smaller of:

(i) Twenty percent of such plant's receipts from qualified dairy farmers, or (ii) 150,000 pounds; and

(2) Total disposition of fluid milk products, except filled milk, on routes during the month equals or exceeds 50 percent of receipts of fluid milk products, except filled milk, from qualified dairy farmers and supply plants.

2. Section 1043.12 is revised to read as follows:

§ 1043.12 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who received no fluid milk products except from his own production or by transfer from a pool plant, and receives no nonfluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts by transfer from a pool plant) and the operation of the processing business is the personal enterprise and risk of such person.

3. Section 1043.16 is revised to read as follows:

§ 1043.16 Fluid milk product.

"Fluid milk product" means milk, flavored milk, skim milk, buttermilk, filled milk, half-and-half, or other mixtures of cream and milk containing less than 18 percent butterfat.

4. Section 1043.17 is revised to read as follows:

§ 1043.17 Route.

"Route" means a delivery (including delivery by a vendor, or sale from a plant or plant store) of any fluid milk product, other than a delivery in bulk form to any milk or filled milk processing plant.

5. In § 1043.18, the introductory text immediately preceding paragraph (a) and paragraph (d) are revised to read as follows:

§ 1043.18 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(d) "Unregulated supply plant" means a nonpool plant that is neither an order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

6. A new § 1043.19 is added to read as follows:

§ 1043.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1043.30(c), subparagraph (2) is revised to read as follows:

§ 1043.30 Monthly reports of receipts and utilization.

(c) * * *

(2) The utilization or disposition of such receipts. Each handler shall report separately the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk, except filled milk, and as filled milk. The report for each handler pursuant to § 1043.9(b) shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. Section 1043.33 is revised to read as follows:

§ 1043.33 Exempt handler reports.

Each handler exempt pursuant to § 1043.82 or § 1043.83 shall report to the market administrator his disposition of fluid milk products on routes in the marketing area and a report showing separately in-area route sales of filled milk at such time and in such manner as the market administrator shall prescribe.

9. Section 1043.34 is revised to read as follows:

§ 1043.34 Records and facilities.

Each handler shall maintain and make available to the market administrator,

during the usual hours of business, such accounts and records, of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products or filled milk received and disposed of in the same form, (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products (including filled milk) handled, (c) inventories of all milk and milk products (including filled milk) on hand at the beginning and end of each month, and (d) payments to producers and cooperative associations.

9a. In § 1043.41(b), subparagraph (2) is revised to read as follows:

§ 1043.41 Classes of utilization.

(b) * * *

(2) Skim milk and butterfat disposed of as fluid cream or in any product which contains 6 percent or more nonmilk fat (or oil);

10. In § 1043.43(d), subparagraph (5) is revised to read as follows:

§ 1043.43 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II or Class III; and

11. In § 1043.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1043.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and cream received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or cream;

(ii) Receipts of fluid milk products (except filled milk) and cream that are not approved by a duly constituted health authority for fluid consumption.

and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products and cream from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another marketwide pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II or Class III but not in excess of such quantity:

(i) Receipts of fluid milk products and cream from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II or Class III utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products and cream in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II or Class III utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products and cream from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) and (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products and cream in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) and (4) (ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1043.22(j) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

12. Section 1043.71 is revised to read as follows:

§ 1043.71 Producer-equalization fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to §§ 1043.72, 1043.83, and 1043.84 (including any adjustments thereto pursuant to § 1043.76) and out of which he shall make all payments pursuant to § 1043.73 (including any adjustments thereto pursuant to § 1043.76).

13. In § 1043.78, paragraphs (a) and (d) are revised to read as follows:

§ 1043.78 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the skim milk and butterfat involved in such obligation, unless, within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or association, or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the act, a petition claiming such money.

14. Section 1043.83 is revised to read as follows:

§ 1043.83 Milk subject to other Federal orders.

(a) Milk received at the plant of a handler at which the handling of milk is fully subject during the month to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act and from which the disposition of Class I milk (excluding filled milk) in the other Federal marketing area, either during the month or

during the average of the 12 preceding months, exceeds that in the Upstate Michigan marketing area shall be exempted for such month from all the provisions hereof except as specified in paragraphs (b) and (c) of this section, unless the Secretary determines that such plant is more appropriately regulated under this part.

(b) Each handler operating a plant specified in paragraph (a) of this section shall with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in § 1043.8(a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

15. In § 1043.84, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1043.84 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1043.61 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1043.60(e) and a credit in the amount specified in § 1043.72(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk

in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price pursuant to § 1043.61 at the same location or at the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

PART 1044—MILK IN MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.6 is revised as follows:

§ 1044.6 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, flavored milk drinks, buttermilk, filled milk, half and half and cream (sweet or sour).

2. Section 1044.7 is revised as follows:

§ 1044.7 Route.

"Route" means a delivery (including delivery by a vendor or sale from a plant or plant store) of any fluid milk product, other than a delivery to any milk or filled milk processing plant.

3. Section 1044.8 is revised as follows:

§ 1044.8 Fluid milk plant.

"Fluid milk plant" means the premises, buildings and facilities of any milk receiving, processing or packaging plant handling milk eligible for distribution in the marketing area as Grade A milk or conforming to the requirements of Michigan Act No. 169, Public Acts 1929, as amended:

(a) From which any fluid milk product, except filled milk, is disposed of during the month in the marketing area on routes except as provided in § 1044.81; or

(b) From which any milk or skim milk, except skim milk in filled milk, is delivered to plants described in paragraph (a) of this section on ten or more days in any of the months of July through De-

cember or on three or more days in any of the months of January through June.

4. Section 1044.9 is revised as follows:

§ 1044.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a fluid milk plant.

5. Section 1044.19 is added as follows:

§ 1044.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1044.30, paragraph (a) (2) is revised as follows:

§ 1044.30 Monthly reports of receipts and utilization.

(a)

(2) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing in-area and outside area route disposition of filled milk; and

7. Section 1044.34 is revised as follows:

§ 1044.34 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of all his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to:

(a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products (including filled milk) received and disposed of in the same form;

(b) The weights and tests for butterfat, skim milk and other content of all

milk and milk products (including filled milk) handled;

(c) Inventories of all dairy products (including filled milk) on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

8. In § 1044.43, paragraph (d) (5) is revised as follows:

§ 1044.43 Transfers.

(d)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1044.46, subparagraphs (3), (4) and (7) (i) of paragraph (a) are revised as follows:

§ 1044.46 Allocation of skim milk and butterfat classified.

(a)

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) that are not approved by a duly constituted health authority, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all fluid milk plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other fluid milk plant handlers and in receipts in bulk from other order plants; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts

of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all fluid milk plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other fluid milk plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other fluid milk plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) * * *

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv), (4) (i) or (ii) of this paragraph; and

10. In § 1044.75, paragraphs (a) and (d) are revised as follows:

§ 1044.75 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's report of utilization of the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or association or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler

any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

11. Section 1044.82 is revised as follows:

§ 1044.82 Handlers subject to other Federal orders.

The provisions of this part shall not apply to a handler with respect to the operation of a fluid milk plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and the disposition of fluid milk products, except filled milk, in the other Federal marketing area exceeds that in the Michigan Upper Peninsula marketing area: *Provided*, That the operator of a fluid milk plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.9 is revised to read as follows:

§ 1046.9 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk in the marketing area on a route and receives no fluid milk products from other dairy farmers or nonpool plants and no non-fluid milk products for reconstitution in fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

2. In § 1046.12, paragraph (a) is revised to read as follows:

§ 1046.12 Pool plant.

(a) A city plant, other than a plant operated by a producer-handler, which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products, except filled milk, received during the 2 months immediately preceding from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), from country plants and from pool plants in containers not larger than a gallon are disposed of as Class I milk, except filled milk, from such plant during such 2-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the 2 preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) An amount of Class I milk, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in § 1046.7(a), from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), and from country plants is distributed on routes in the marketing area;

3. In § 1046.13, the introductory text immediately preceding paragraph (a) and paragraphs (c) and (d) are revised as follows:

§ 1046.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

4. Amend § 1046.15 to read as follows:

§ 1046.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, milk drinks (plain or flavored), reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, pancake mix, evaporated milk, condensed milk, aerated cream products, eggnog, and cultured sour mixtures not labeled as Grade A) which are neither

sterilized nor packaged in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more non-milk fat (or oil).

5. Section 1046.17 is revised to read as follows:

§ 1046.17 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.

6. A new § 1046.19a is added to read as follows:

§ 1046.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1046.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the disposition of fluid milk products, except filled milk, and filled milk on routes in the marketing area.

(b) Each handler specified in § 1046.8 (d) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

8. Section 1046.33 is revised to read as follows:

§ 1046.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled;

(c) Payments to producers, including supporting records of all deductions and written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products (including filled milk) on hand at the beginning and end of each month.

9. In § 1046.44, paragraphs (d), (e), and (f) (5) are revised to read as follows:

§ 1046.44 Transfers.

(d) As Class I milk, if transferred in bulk (in the form of milk, skim milk, filled milk or cream) or diverted to a nonpool plant that is neither another order plant nor a producer-handler plant, located 250 airline miles or more as determined by the market administrator, from the nearer of the City Halls in either Louisville, Ky., or Evansville, Ind.

(e) As Class I milk, if transferred in bulk (in the form of milk, skim milk, filled milk or cream) or diverted to a nonpool plant that is neither another order plant nor a producer-handler plant located less than 250 airline miles as determined by the market administrator, from the nearer of the City Halls in either Louisville, Ky., or Evansville, Ind., unless the requirements of subparagraphs (1) and 2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1046.46(a), subparagraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1046.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series begin-

ning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products, except filled milk, for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from pool plants of other handlers, from a cooperative association as a handler pursuant to § 1046.8(c), and in bulk receipts from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7)(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(v) and (4)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1046.22(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the

pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

11. Section 1046.61 revised to read as follows:

§ 1046.61 Plants subject to other Federal orders.

(a) Unless determined otherwise by the Secretary, the provisions, except paragraph (b) of this section, of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1046.12 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month: *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) Each handler operating a plant specified in § 1046.12(a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1046.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1046.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1046.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1046.70(e) and a credit in the amount specified in § 1046.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1046.83 is revised to read as follows:

§ 1046.83 Producer-Settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1046.61, 1046.62, 1046.84, and 1046.86 and out of which he shall make all payments pursuant to §§ 1046.85 and 1046.86: *Provided*, That payments due any handler shall be offset by payments due from such handler.

14. In § 1046.89, paragraphs (a) and (d) are revised to read as follows:

§ 1046.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report of the skim milk and butterfat involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deductions of set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.9 is revised to read as follows:

§ 1049.9 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no nonfluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

2. In § 1049.12, paragraph (a) is revised to read as follows:

§ 1049.12 Pool plant.

(a) A distributing plant with:

(1) Total route sales, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.14) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route sales within the marketing area during the month of at least 10 percent of such receipts, such route sales to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if fluid milk products, except filled milk, are disposed of from the plant in the marketing area on routes during such month.

3. In § 1049.13, the introductory text immediately preceding paragraph (a) is revised to read as follows:

§ 1049.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

4. Section 1049.15 is revised to read as follows:

§ 1049.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, filled milk, buttermilk, milk drinks (plain or flavored), "fortified" products, "dietary" milk products, concentrated milk or skim milk, reconstituted milk, skim milk, or milk drinks (plain or flavored), and cream or any mixture in fluid form of cream, milk or skim milk (except eggnog, yogurt, milk shake mix, frozen dessert mix, sour cream, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal or glass containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. Section 1049.17 is revised to read as follows:

§ 1049.17 Route.

"Route" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1049.41(a)(1) other than a delivery in bulk form to any milk or filled milk processing plant.

6. A new § 1049.19 is added to read as follows:

§ 1049.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1049.30, paragraph (b) is revised to read as follows:

§ 1049.30 Reports of receipts and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the disposition of Class I milk, except filled milk, and filled milk on routes inside the marketing area; and

8. Section 1049.31 is revised to read as follows:

§ 1049.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler specified in § 1049.8 (c) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1049.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. Section 1049.33 is revised to read as follows:

§ 1049.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

(d) Payments to producers or dairy farmers, as the case may be, and cooperative associations, including the amount and nature of any deductions and the disbursement of moneys so deducted.

10. In § 1049.44(d), subparagraph (5) is revised to read as follows:

§ 1049.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1049.46(a) paragraphs (2), (3), (4), (7), and (8) are revised to read as follows:

§ 1049.46 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in

excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (1) Multiple any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk, in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) and (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order

plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs, (3) (v) and (4) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1049.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

12. Section 1049.61 is revised to read as follows:

§ 1049.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as the operator of a plant specified in paragraph (a), (b), or (c) of this section the provisions of this part shall not apply, except as specified in paragraphs (d) and (e) of this section:

(a) A distributing plant from which the Secretary determines a greater proportion of fluid milk products (except filled milk) is disposed of on routes in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition (except filled milk) on routes is made in such other marketing

area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(b) A distributing plant which meets the requirements set forth in § 1049.12 (a) which also meets the requirements of another order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of milk (except filled milk) is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other order;

(c) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1049.12(b) and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants qualified on the basis of route sales in this marketing area;

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section, shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1049.62, paragraphs (a) and (b) (1) (i) are revised to read as follows:

§ 1049.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distrib-

uting plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is greater, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price;

(b) Except as a handler may elect the option pursuant to paragraph (a) of this section, an amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1049.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1049.70(e) and a credit in the amount specified in § 1049.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

14. Section 1049.81 is revised to read as follows:

§ 1049.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1049.61, 1049.62, 1049.82, 1049.84, and 1049.88 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1049.83, 1049.84, and 1049.88, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1049.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate

§ 1049.80 in accordance with the requirements of § 1049.71(i).

15. In § 1049.87, paragraphs (a) and (d) are revised to read as follows:

§ 1049.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. In § 1050.12 paragraphs (a) and (b) are revised to read as follows:

§ 1050.12 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1050.61, from which during the month:

(1) Disposition of fluid milk products, except filled milk, in the marketing area on routes is equal to 10 percent or more of its Grade A receipts from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1050.9

(d), or from which an average of not less than 7,000 pounds per day of fluid milk products, except filled milk, is distributed on routes in the marketing area; and

(2) Total disposition of fluid milk products, except filled milk, on routes is equal to 50 percent or more of its Grade A receipts from dairy farmers and co-operative associations in their capacity as handlers pursuant to § 1050.9(d) during the months of August through February and 40 percent during all other months;

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 1050.9(d) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months;

2. Section 1050.13 is revised to read as follows:

§ 1050.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

3. Section 1050.16 is revised to read as follows:

§ 1050.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or fortified), including "dietary milk products" and reconstituted milk or skim milk; filled milk; concentrated milk not in hermetically sealed containers, cream (sweet or sour), and mixtures of cream and milk or skim milk, but not including the following: Aerated cream products, frozen storage cream, sour cream and sour cream mixtures not labeled Grade A, eggnog, yogurt, frozen dessert mixes, evaporated or condensed milk, and sterilized fluid milk products in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1050.19a is added to read as follows:

§ 1050.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1050.30 subparagraphs (3) and (5) of paragraph (a) and paragraph (c) are revised to read as follows:

§ 1050.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(5) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require;

(c) Each handler specified in § 1050.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk; and

6. In § 1050.43, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1050.43 Transfers and diversions.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II;

7. In § 1050.45, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (i) of paragraph (a) are revised to read as follows:

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk prod-

ucts received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in

Class II, if Class II utilization was requested by the transferee handler and the operator of the transferor plant requests such utilization;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) and (ii) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (4) (v) or (5) (iii) of this paragraph pursuant to the following procedure:

8. Section 1050.61 is revised to read as follows:

§ 1050.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) A distributing plant qualified pursuant to § 1050.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Central Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph;

(b) A distributing plant qualified pursuant to § 1050.12(a) which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Central Illinois marketing area as Class I route disposition than as Class I route disposition in the other marketing

area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation even though such plant has greater such Class I route disposition in the marketing area of the Central Illinois order;

(c) Any plant qualified pursuant to § 1050.12(c) for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act;

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1050.30 through 1050.32) and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

9. In § 1050.62 paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1050.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1050.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts of such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class

II price. There shall be included in the obligation so computed a charge in the amount specified in § 1050.70(f) and a credit in the amount specified in § 1050.84 (b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

10. Section 1050.83 is revised to read as follows:

§ 1050.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows: (a) All payments made by handlers pursuant to §§ 1050.61, 1050.62, 1050.84, and 1050.86 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1050.85 and 1050.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and (b) all amounts subtracted pursuant to § 1050.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.80 in accordance with the requirements of § 1050.71(i).

11. In § 1050.90 paragraphs (a) and (d) are revised to read as follows:

§ 1050.90 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and

butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1060—MILK IN THE MINNESOTA-NORTH DAKOTA MARKETING AREA

1. Section 1060.11 is revised to read as follows:

§ 1060.11 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

- (a) Operates a dairy farm and a distributing plant;
- (b) Receives no milk during the month from other dairy farmers or from sources other than pool plants and not more than 3,000 pounds of milk and fluid milk products (including the milk equivalent of nonfluid products which are reconstituted into fluid milk products) during the month from any source;

(c) Receives no nonfluid milk products from any source for reconstitution into fluid milk products except that received within the limitations set forth in paragraph (b) of this section;

(d) Such person must provide proof satisfactory to the market administrator that (1) the care and management of all the dairy animals and other resources necessary to produce the milk are the personal enterprise of and at the personal risk of such person, and (2) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

2. Section 1060.18 is revised to read as follows:

§ 1060.18 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, filled milk, concentrated milk, buttermilk, milk drinks (plain or flavored), sour cream and sour cream products labeled Grade A, cream or any mixture in fluid form of cream and milk or skim milk. The term includes these products in fluid, frozen, fortified (including "dietary" milk products) or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as yogurt, eggnog, aerated cream in dispensers, ice cream mix, frozen dessert mix and evaporated or condensed milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3. A new § 1060.19 is added, to read as follows:

§ 1060.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

4. Section 1060.20 is revised to read as follows:

§ 1060.20 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk or filled milk from one tank truck to another shall not be a plant under this definition. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

5. In § 1060.23, paragraphs (a) and (b) are revised to read as follows:

§ 1060.23 Pool plant.

(a) A distributing plant from which during the month there is disposed:

- (1) As Class I milk, except filled milk, on routes in the marketing area not less than 15 percent of Grade A milk receipts at such plant; and

(2) As Class I milk, except filled milk, on routes or by transfer to another plant and classified as Class I pursuant to § 1060.44 not less than the applicable percentage of such plant's receipts of Grade A milk:

- (i) March through June, 20 percent;
- (ii) July through February, 25 percent; *Provided*, That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the applicable percentage requirement of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested; and

(b) A supply plant from which not less than 25 percent of its producer receipts at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants qualified pursuant to paragraph (a) of this section: *Provided*, That a supply plant which qualified pursuant to this paragraph in each of the immediately preceding months of August through November shall be a pool plant for the months of March through June unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

6. In § 1060.24, the introductory text preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1060.24 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a distributing plant, and is neither an other order plant nor a producer-handler plant.

7. In § 1060.35, paragraphs (e) and (h) are revised to read as follows:

§ 1060.35 Reports of receipts and utilization.

(e) A separate statement showing the disposition of fluid milk products on routes in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(h) Each handler specified in § 1060.10(d) who operates a partially regulated distributing plant shall report as required in this section, except that receipts of Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7a. In § 1060.38, paragraphs (b) and (c) are revised to read as follows:

§ 1060.38 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

8. In § 1060.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1060.44 Transfers.

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. Section 1060.46 is revised to read as follows:

§ 1060.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1060.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1060.41(b)(5);

(2) Subtract from the pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order, and from exempt institutions as defined in § 1060.60(b);

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order

plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) The pounds of skim milk in receipts which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) the sum of the pounds of skim milk in producer milk, receipts of fluid milk products from pool plants of other handlers, and receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4)(v) of this paragraph; and

(ii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the transferee handler but not in excess of the pounds of skim milk remaining in Class II milk;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4)(iv) or (5)(i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4)(v) or (5)(ii) of this paragraph;

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1060.32(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I milk, the remaining pounds of such receipts;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1060.44(a); and

(11) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

10. The introductory text of § 1060.61 which precedes paragraph (a) is revised to read as follows:

§ 1060.61 Plants subject to other Federal orders.

The provisions of this order shall not apply with respect to a plant of a handler specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

§ 1060.61 [Amended]

10a. In paragraph (a) of § 1060.61, the phrase "fluid milk products" as it appears in the text preceding the proviso is changed to read "fluid milk products, except filled milk"; and the phrase "Class I disposition" as it appears in the proviso is changed to read "Class I disposition, except filled milk".

10b. In § 1060.61, paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 1060.61 Plants subject to other Federal orders.

(b) A distributing plant which meets the requirements set forth in § 1060.23(a) which also meets the requirements of another marketing order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of fluid milk products, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other marketing order.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1060.35 through 1060.37) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) or (b) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month, an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1060.62, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1060.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1060.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1060.70(f) and a credit in the amount specified in § 1060.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially

regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. In § 1060.83, paragraph (a) is revised to read as follows:

§ 1060.83 Producer-settlement fund.

(a) Payments made by handlers pursuant to §§ 1060.61, 1060.62, 1060.84 and 1060.86.

13. In § 1060.89, paragraphs (a) and (d) are revised to read as follows:

§ 1060.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by

the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. Section 1062.12 is revised to read as follows:

§ 1062.12 Pool plant.

"Pool plant" means:

(a) Any distributing plant, other than that of a producer-handler or one described in § 1062.61, which:

(1) Has disposition during the month of fluid milk products, except filled milk, on routes and in packaged form to pool distributing plants, which, after subtraction of the quantity of packaged fluid milk products, except filled milk, received from other pool plants, is equal to at least 50 percent of such plant's total receipts of Grade A fluid milk products from dairy farmers (including milk diverted by the plant operator), supply plants and cooperative associations as handlers pursuant to § 1062.8(d), exclusive of packaged fluid milk products, except filled milk, received from other pool plants, and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts or an average of not less than 7,000 pounds per day, whichever is less; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in subparagraph (1) of this paragraph;

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and cooperative associations in their capacity as a handler pursuant to § 1062.8(d) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of September through February shall be designated a pool plant in each of the following months of March through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments;

(c) Any plant which is operated by or under contract to a cooperative association, or a federation of cooperatives, if:

(1) The operator of such plant(s) requests pool status, and 50 percent or more of all the Grade A milk from farms of the member producers of such cooperative or federation including milk delivered by the cooperative as a handler pursuant to § 1062.8(d) has been shipped to and physically received at pool distributing plants during the current month or the previous 12-month period ending with

the current month, either directly from producer member farms or by transfer from such association plant(s); and

(2) Such a plant does not qualify during the month as a "pool plant" under another market pool order issued pursuant to the Act by making shipments of milk to plants which qualify as "pool plants" under such other order; or

(3) Such plant meets the requirements of subparagraph (2) of this paragraph and met the requirements of subparagraph (1) of this paragraph in the preceding month.

2. Section 1062.13 is revised to read as follows:

§ 1062.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

3. Section 1062.16 is revised to read as follows:

§ 1062.16 Fluid milk products.

"Fluid milk product" means milk, skim milk, concentrated milk, buttermilk, flavored milk, milk drinks (plain or flavored), fortified milk or skim milk (including "dietary milk products"), filled milk, reconstituted milk or skim milk, sour cream and sour cream mixtures labeled Grade A, cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog, sour cream or sour cream mixtures not labeled Grade A, dips not labeled Grade A, and sterilized milk and milk products hermetically sealed in metal or glass containers and so processed either before or after sealing so as to prevent microbial spoilage). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. Section 1062.17 is revised to read as follows:

§ 1062.17 Route disposition.

"Route disposition" or "disposed of on routes" means any deliver of a fluid milk product to a retail or wholesale outlet (including any delivery through a vendor, or a sale in packaged form from a plant or plant store) except a delivery

to another plant or to commercial food establishments pursuant to § 1062.41(b) (4).

5. A new § 1062.19 is added to read as follows:

§ 1062.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1062.30, paragraphs (a) (3), (4) and (b) are revised to read as follows:

§ 1062.30 Reports of receipts and utilization.

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities;

(i) Of fluid milk products on hand at the end of the month;

(ii) Of route disposition of fluid milk products in the marketing area, and route disposition of filled milk in and outside the marketing area; and

(4) Such other information with respect to receipts and utilization as the market administrator may request;

(b) Each handler described in § 1062.8 (b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk and such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. In § 1062.33, paragraph (b) is revised to read as follows:

§ 1062.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

8. In § 1062.44, subparagraph (5) of paragraph (c) is revised to read as follows:

§ 1062.44 Transfers.

(5) For purposes of this paragraph (c), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid products shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class II milk; and

9. In § 1062.46(a), subparagraphs (2), (3), (4), (5), (6), (7), and the introductory text of subparagraph (8) preceded-

ing subdivision (i) are revised to read as follows:

§ 1062.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order or from a plant exempt pursuant to § 1062.60(b);

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II milk but not in excess of such quantity:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II milk utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II milk utilization was requested by the operator of such plant and the handler;

(iii) The pounds of skim milk in receipts of milk by diversion from an other

order plant for which Class II utilization was requested by the receiving handler and by the diverting handler under the other order, but not in excess of the pounds of skim milk remaining in Class II milk;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph:

10. Section 1062.61 is revised to read as follows:

§ 1062.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(c) A supply plant meeting the requirements of § 1062.12(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of March through

August if such plant retains automatic pooling status under this part;

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1062.30 through 1062.32) and allow verification of such reports by the market administrator; and

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1062.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1062.62 Obligations of handlers operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1062.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or any other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1062.70(e) and a credit in the amount specified in § 1062.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of route disposition (other than to pool plants) of skim milk and butterfat disposed of in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II milk price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. Section 1062.83 is revised to read as follows:

§ 1062.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1062.61, 1062.62, 1062.84, and 1062.86, and out of which he shall make all payments to handlers pursuant to §§ 1062.85 and 1062.86. The market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1062.89, paragraphs (a) and (d) are revised to read as follows:

§ 1062.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

1. In § 1063.10, paragraphs (a) and (b) are revised as follows:

§ 1063.10 Pool plant.

(a) A distributing plant from which:
(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products other than filled milk from other pool distributing plants, is not less than 45 percent of the total Grade A fluid milk products, except filled milk, received at such plant, exclusive of receipts of packaged fluid milk products from other pool distributing plants and receipts from other order plants which are assigned pursuant to § 1063.46(a) (4) (ii) and the corresponding step of § 1063.46(b); and
(2) Not less than 15 percent of such receipts during the month are so disposed of in the marketing area on routes.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

2. Section 1063.11 is revised as follows:
§ 1063.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1063.15 is revised as follows:

§ 1063.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and butterfat (except aerated cream products, products containing cheese and labeled as such, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1063.18 is added as follows:

§ 1063.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1063.30, paragraph (f) is revised as follows:

§ 1063.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. In § 1063.31, paragraph (c) (1) is revised as follows:

§ 1063.31 Other reports.

(c) * * *
(1) As required pursuant to § 1063.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk

products and the quantity thereof which is reconstituted skim milk.

7. In § 1063.44, paragraph (e) (5) is revised as follows:

§ 1063.44 Transfers.

(e) * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1063.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1063.46 Allocation of skim milk and butterfat classified.

(a) * * *
(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying

the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk, including diversions, from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(8) subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) or (4) (ii) of this paragraph;

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1063.22(m) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

9. Section 1063.61 is revised as follows:

§ 1063.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant, a supply plant or a plant otherwise qualified as a pool plant pursuant to § 1063.10(c) during any month in which such plant would be subject to the classification and pricing provision of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1063.10 and to retail and wholesale outlets in the Quad Cities-Dubuque marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market adminis-

trator may require (in lieu of the reports required pursuant to § 1063.30) and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the non-pool plant and subtract its value at the Class II price.

10. In § 1063.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1063.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1063.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1063.70(e) and a credit in the amount specified in § 1063.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and

other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. Section 1063.83 is revised as follows:

§ 1063.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1063.61, 1063.62, 1063.84, and 1063.86 and out of which he shall make all payments to handlers pursuant to §§ 1063.85 and 1063.86.

12. In § 1063.89, paragraphs (a) and (d) are revised as follows:

§ 1063.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in

the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

PART 1064—MILK IN GREATER KANSAS CITY MARKETING AREA

1. Section 1064.12 is revised as follows:

§ 1064.12 Pool plant.

"Pool plant" means a plant (except a plant exempt pursuant to § 1064.60 or § 1064.62) specified in paragraph (a), (b), or (c) of this section:

(a) A distributing plant from which during the month or the immediately preceding month:

(1) Not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of in the marketing area on routes in the form of fluid milk products, except filled milk, and

(2) Not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.15 by the handler operating such plant is disposed of on routes in the form of fluid milk products, except filled milk: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirement of subparagraph (1) of this paragraph, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;
(ii) September and October, 50 percent; and
(iii) All other months, 45 percent.

(b) A supply plant from which during the month the volume of Grade A fluid milk products, except filled milk, shipped to and received at pool plants pursuant to paragraph (a) of this section and/or disposed of in the marketing area as Class I, except filled milk, on routes is not less than 30 percent during November, December, and January and not less than 50 percent during all other months of the volume of Grade A milk received from dairy farmers at such plant (including receipts from a handler pursuant to § 1064.7(c) except receipts of diverted milk pursuant to § 1064.15); *Provided*, That any supply plant which is a pool plant during September through January shall be pooled for the following months of February through August if the required percentages pursuant to this paragraph are not met, unless such operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) A supply plant which is operated by a cooperative association in any month in which the member producer milk of such cooperative association received during the month at pool distributing plants either by transfer from such supply plant or directly from member producers' farms is equal to or in excess of the following percentages of such co-operators' total member producer milk: September, October, November, December, and January, 65 percent; all other months, 50 percent. If two or more cooperative associations desire to qualify, a supply plant operated by one of such co-operators as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a request to this effect in writing with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentages of the total member producer milk of such cooperative associations was received during the month at pool distributing plants.

2. Section 1064.13 is revised as follows:

§ 1064.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant (except the plant of a handler pursuant to § 1064.7(f), an other order plant, or a producer-handler plant) from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.7(f) from which a fluid milk product is shipped during the month to a pool plant.

3. Section 1064.17 is revised as follows:

§ 1064.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, fortified milk or skim milk, reconstituted milk or skim milk, filled milk, sweet or sour cream and any mixture of such cream and milk or skim milk (including such mixtures containing less than the required butterfat standard for cream but not including any cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product) and concentrated (frozen or fresh) milk, flavored milk, or flavored milk drinks which are neither sterilized nor in hermetically sealed cans. This definition shall not include a product which

contains 6 percent or more nonmilk fat (or oil).

4. A new § 1064.17a is added as follows:

§ 1064.17a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1064.30, paragraphs (e) and (h) are revised as follows:

§ 1064.30 Reports of receipts and utilization.

(e) The disposition of fluid milk products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(h) Each handler specified in § 1064.7

(d) who operates a partially regulated distributing plant shall report as required in this section, with receipts in Grade A milk reported in lieu of those in producer milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

6. In § 1064.33, paragraphs (b) and (d) are revised as follows:

§ 1064.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and each milk product (including filled milk) on hand at the beginning and at the end of each month.

7. In § 1064.44, paragraph (e)(5) is revised as follows:

§ 1064.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to the other class shall be classified as Class III; and

8. Section 1064.46 is revised as follows:

§ 1064.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1064.45, the market administrator shall determine the classification

of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III, the pounds of skim milk classified as Class III pursuant to § 1064.41(c)(7);

(2) Subtract from the remaining pounds of skim milk in each class, the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(vi) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract, in the order specified below, from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products, except filled milk, for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of fluid milk products from a handler pursuant to § 1064.7(f);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another marketwide pool order.

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II milk or Class III milk but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products that were not subtracted pursuant to subparagraph (3)(v) of this paragraph from an unregulated supply plant;

(a) For which the handler requests Class II or Class III in series beginning with the requested class; or

(b) In series beginning with Class III, which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, receipts from other pool plants, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(vi) of this paragraph; and

(ii) Receipts of fluid milk products that were not subtracted pursuant to subparagraph (3)(vi) of this paragraph in bulk from an other order plant in excess of similar transfers to such plant, if

Class II or Class III was requested by the operators of both plants in series beginning with the requested class;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III milk, the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3)(v) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(vi) or (4)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1064.22(m) or the percentage that combined Class II and Class III utilization remaining is of the total remaining utilization of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1064.44(a); and

(10) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

9. In § 1064.61, paragraphs (a)(1)(i) and (b) are revised as follows:

§ 1064.61 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1064.70 shall be determined as though such plant were a pool plant. For purposes of such

computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1064.70(e) and a credit in the amount specified in § 1064.84(a)(2)(i) with respect to receipts, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

10. Section 1064.62 is revised as follows:

§ 1064.62 Plants subject to other Federal orders.

The provisions of this part shall not apply to any plant which meets the requirements of paragraph (a), (b), or (c) of this section, except as specified in paragraphs (d) and (e) of this section.

(a) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products, except filled milk, was disposed of during the month on routes in such other marketing area and to pool plants qualified on the basis of route distribution in such other marketing

area than was so disposed of in this marketing area except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid product disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A distributing plant qualified pursuant to § 1064.12 which also meets the pooling requirements of another Federal order and a greater volume of fluid milk products, except filled milk, was disposed of during the month on routes in this marketing area and to pool plants qualified on the basis of route distribution in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A supply plant meeting the requirements of § 1064.12, which also meets the pooling requirements of another Federal order, from which greater direct marketing area route disposition in the form of fluid milk products, except filled milk, and qualifying shipments are made to plants regulated under such other order than are made in this marketing area on routes in the form of fluid milk products, except filled milk, and to plants regulated under this part, except that during the months of February through August if the operator of such plant gives written notification to the market administrator on or before the 1st day of any such month that he elects to maintain automatic pool status for such plants under this part for the month and each subsequent month through August.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1064.30 through 1064.32) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool

orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

11. In § 1064.83, paragraph (a) is revised as follows:

§ 1064.83 Producer-settlement fund.

(a) Payments made by handlers pursuant to § 1064.61 (a) and (b), § 1064.62 (e), and §§ 1064.84 and 1064.86.

12. In § 1064.89, paragraphs (a) and (d) are revised as follows:

§ 1064.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall contain but need not be limited to, the following information:

(1) The amount of the obligation;
(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.9 is revised to read as follows:

§ 1065.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the op-

erator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;

(b) Receives no nonfluid milk products for reconstituting into fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

2. In § 1065.12, paragraphs (a) and (b) are revised to read as follows:

§ 1065.12 Pool plant.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of plants qualifying as pool plants pursuant to this paragraph), and cooperative associations pursuant to § 1065.8 (d), is disposed of during the month on routes and not less than 15 percent of such receipts are so disposed of in the marketing area; and

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and cooperative associations pursuant to § 1065.8(d) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of August through December shall be a pool plant for the succeeding months of January through July, unless the plant operator requests the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

3. In § 1065.13, the introductory text preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1065.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant

from which fluid milk products are shipped during the month to a pool plant.

4. Section 1065.16 is revised to read as follows:

§ 1065.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored), filled milk, concentrated milk (frozen or fresh), cream, cultured or sour cream or any mixture in fluid form of milk or skim milk and cream (except frozen cream, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream products, ice cream mix, frozen dessert mixes, eggnog, evaporated or condensed milk, sterilized products packaged in hermetically sealed metal or glass containers, and cultured sour mixtures of cream and milk or skim milk to which cheese or any other food substance other than a milk product has been added and not labeled as Grade A).

5. A new § 1065.19 is added, to read as follows:

§ 1065.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1065.30, subparagraph (3) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1065.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization in each class of the quantities required to be reported, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1065.8 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk shall be reported in lieu of those in producer milk; such report shall include separate statements showing the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

7. Section 1065.33 is revised to read as follows:

§ 1065.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, or his representative, during the usual hours of business, such accounts and records of his operations, and such facilities as, in the opinion of the market

administrator, are necessary to verify or to establish the correct data with respect to:

(a) The receipts and utilization in whatever form of all skim milk and butterfat required to be reported pursuant to § 1065.30;

(b) The weights and tests for butterfat and other contents of all milk and milk products (including filled milk) received or utilized; and

(c) Payments to producers or cooperative associations.

8. In § 1065.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1065.44 Transfers.

(f) * * *

(5) For the purposes of this paragraph if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

9. Section 1065.46 is revised to read as follows:

§ 1065.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1065.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1065.41(c) (8);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an

order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, in sequence beginning with Class III from the pounds of skim milk remaining in Classes II and III, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II or Class III utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph.

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such a plant, if Class II or Class III utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) or (4) (ii) of this paragraph;

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1065.22(1) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers

according to the classification assigned pursuant to § 1065.44(a);

(10) Subtract pro rata from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from a cooperative association in its capacity as a handler pursuant to § 1065.8(d); and

(11) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

10. Section 1065.61 is revised to read as follows:

§ 1065.61 Plants subject to other Federal orders.

The provisions of this part, except §§ 1065.32 through 1065.34 and as specified in paragraph (c) of this section shall not apply to a handler with respect to the operation of plants described in paragraphs (a) or (b).

(a) A plant qualified pursuant to § 1065.12(a) from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any plant qualified pursuant to § 1065.12(b) for any portion of the period of January through July, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(c) Each handler operating a plant specified in paragraph (a), of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketing pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this

paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

11. In § 1065.62, subdivision (i) of paragraph (a)(1), and paragraph (b) are revised to read as follows:

§ 1065.62 Obligations of handler operating a partially regulated distributing plant.

(a) *

(1) (i) The obligation that would have been computed pursuant to § 1065.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1065.70(e) and a credit in the amount specified in § 1065.82 (b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated, distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

12. Section 1065.81 is revised to read as follows:

§ 1065.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1065.61, 1065.62 (a) and (b), 1065.82, and 1065.84 and out of which he shall make all payments to handlers pursuant to §§ 1065.83 and 1065.84.

13. In § 1065.87, paragraphs (a) and (d) are revised to read as follows:

§ 1065.87 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on skim milk and butterfat involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service if such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists were received or handled; and

(3) If the obligation is payable to one or more producer(s) or association of producers, the names of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1068—MILK IN THE MINNEAPOLIS-ST. PAUL, MINNESOTA MARKETING AREA

1. Section 1068.7 is revised to read as follows:

§ 1068.7 Route.

"Route" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any item of Class I milk to a wholesale

or retail stop, including any governmentally operated institution, but (except for filled milk) excluding any disposition of skim milk or butterfat not eligible for sale in fluid form as Grade A milk or cream in the marketing area from a nonpool plant to any other plant or to a commercial processor of foods.

2. Section 1068.8 is revised to read as follows:

§ 1068.8 Plant.

"Plant" means the entire land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, maintained and operated at the same location primarily for the receiving, processing or other handling of milk or milk products (including filled milk). Under this definition any separate portion of a premises or facilities qualified under § 1068.9(b) used to receive, process, or otherwise handle milk or filled milk shall be deemed to be a separate plant. This definition shall not include any building, premises, facilities, or equipment used primarily (a) to hold or store bottled milk or milk products (including filled milk) in finished form in transit for wholesale or retail distribution on a route(s), or (b) to transfer milk from one conveyance to another in transit from farm to plant of first receipt.

3. In § 1068.9, paragraphs (a) and (b) are revised to read as follows:

§ 1068.9 Pool plant.

(a) A plant in which milk is processed or packaged and from which not less than 15 percent of its total disposition of Class I milk, except filled milk, during the month either by the operator of such plant or by another person is made within the marketing area on a route(s): *Provided*, That the total quantity of Class I milk, except filled milk, disposed of from such plant during the month either inside or outside the marketing area, is equal to 30 percent or more of such plant's total receipts of skim milk and butterfat eligible for sale in fluid form as Grade A milk within the marketing area in any of the months of January through June, or to 50 percent or more of such total receipts in any of the months of July through December; or

(b) Any plant from which during any month 40 percent or more of such plant's total receipts for such month from farms of skim milk or butterfat eligible for sale in fluid form as Grade A milk within the marketing area is delivered to (1) a plant(s) which has qualified pursuant to paragraph (a) of this section, (2) any other plant(s) located within the marketing area from which Class I milk, not including filled milk, is disposed of within the marketing area on a route(s), or (3) a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities: *Provided*, That if during each of the months of August, September, and October, 40 percent or more of such plant's receipts of skim milk or butterfat for such month as described above is delivered as provided in this paragraph, it shall be a pool plant

through the following July: *And provided further*, That any deliveries of milk by a cooperative association during the months of August, September, and October directly from a farm(s) of its producer member(s) to a plant(s) described in paragraph (a) of this section may be considered, for purposes of this paragraph, as having been received first at a plant of such cooperative association.

4. In § 1068.10, the introductory text preceding paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 1068.10 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an order plant nor a producer-handler plant and from which a fluid milk product is shipped during the month to a pool plant.

5. Section 1068.15 is revised to read as follows:

§ 1068.15 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and disposed of as Class I milk on routes in the marketing area;

(b) Receives no milk from the farms of other dairy farmers nor fluid milk products from any other source, except receipts of not more than 50,000 pounds (3.5 percent milk equivalent of butterfat) in the form of milk or filled milk during the month by transfer from pool plants of other handlers;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products;

(d) Has route disposition consisting only of skim milk and butterfat obtained from his own farm production except that received pursuant to the exception set forth in paragraph (b) of this section; and

(e) The maintenance, care and management of the dairy animals and other resources necessary to produce such milk and the processing, packaging, or distribution of milk (including filled milk) are the personal enterprise, and the personal risk, of such person.

6. Section 1068.19 is revised to read as follows:

§ 1068.19 Fluid milk product.

"Fluid milk product" means milk, skim milk (including reconstituted skim milk),

filled milk, concentrated milk, butter-milk, flavored milk, flavored milk drinks (except any such item disposed of as animal feed and sterilized milk, cream, or milk drinks in metal containers hermetically sealed), cream (sweet or sour, including "Smetana" and similar sour cream products and mixtures of cream and milk or skim milk containing less butterfat than the legal standard for cream): *Provided*, That when nonfat milk solids are added for "fortification" the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same mixture and butterfat content. This definition also shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1068.17 is added, to read as follows:

§ 1068.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk products; and contains less than 6 percent nonmilk fat (or oil).

8. Section 1068.30 is revised to read as follows:

§ 1068.30 Monthly reports of receipts and utilization.

(a) On or before the 10th day of each month and in the detail and on forms prescribed by the market administrator, each person who is a handler pursuant to § 1068.13(a) shall report, separately for each pool plant, to the market administrator for the preceding month with respect to all milk and milk products (including filled milk), except any milk product defined as Class II milk which is disposed of in the form in which received without further processing or packaging by the handler, received at each pool plant, the following:

(1) The quantities of skim milk and the quantities of butterfat contained in milk received from producers (including such handler's own production) and contained in milk and filled milk received from producer-handlers and other pool plants.

(2) The quantities of skim milk and quantities of butterfat contained in other source milk, with the sources thereof;

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including on a skim milk equivalent basis any nonfat milk solids used to fortify (or as an additive to) any milk product (including filled milk) as described in § 1068.45, and including the quantities of skim milk and butterfat on hand at the beginning and end of each month as milk and milk products (including filled milk);

(4) A separate statement of the disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(5) Such other information with respect to all receipts and utilization as the market administrator may prescribe.

(b) Each handler specified in § 1068.13 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk, and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each handler specified in § 1068.13 (c) who operates an unregulated supply plant shall report as required in paragraph (a) of this section, except that the receipts in Grade A milk shall be reported in lieu of those in producer milk.

9. In § 1068.33, paragraph (d) is revised to read as follows:

§ 1068.33 Records and facilities.

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product (including filled milk) on hand at the beginning and at the end of each month.

10. In § 1068.44, paragraph (c), and subparagraph (5) of paragraph (f) are revised to read as follows:

§ 1068.44 Transfers.

(c) As Class I milk if moved to a non-pool plant by a cooperative association directly from the farm of the producer and the nonpool plant is one from which milk (including filled milk) is disposed of in fluid form on routes;

(f) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. Section 1068.45 is revised to read as follows:

§ 1068.45 Computation of milk in each class.

For each month the market administrator shall correct mathematical and other obvious errors in the monthly report submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for each handler: *Provided*, That when nonfat milk solids derived from nonfat dry milk, condensed skim milk, and any other product condensed from milk or skim milk, are utilized by such handler either (a) to fortify (or as an additive to) fluid milk,

flavored milk, skim milk, or any other milk product (including filled milk), or (b) for disposition by a handler in reconstituted form as skim milk or a milk drink, the total pounds of skim milk computed for the appropriate class of use shall reflect a volume equivalent to the skim milk used to produce such non-fat milk solids.

12. Section 1068.46 is revised to read as follows:

§ 1068.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1068.45, the market administrator shall determine the classification of produced milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1068.41 (b) (5);

(2) Subtract from the pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer

milk, receipts from a cooperative association as a handler pursuant to the proviso of § 1068.13 (a), receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) or (4) (ii) of this paragraph;

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1068.22 (i) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned pursuant to § 1068.44 (a);

(9) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

13. Section 1068.61 is revised to read as follows:

§ 1068.61 Producer-handlers.

Any handler claiming producer-handler status shall furnish to the market administrator, for verification, evidence of his qualifications as a producer-handler pursuant to § 1068.15 and shall furnish evidence of subsequent changes

made in the manner of producing, securing, or distributing milk (including filled milk) that affect such qualifications as a producer-handler; such verification by the market administrator shall be made within 15 days of receipt of the evidence and shall be effective as of the first day of the month during which verification is made.

14. Section 1068.62 is revised to read as follows:

§ 1068.62 Milk under more than one Federal order.

Milk received at a plant qualified as a pool plant under § 1068.9 shall be exempt from the provisions of this part except as specified in paragraphs (c) and (d) of this section if all the conditions of paragraphs (a) and (b) of this section are met:

(a) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to another regulated area as defined in another marketing agreement or order issued pursuant to the act either on routes or through plants regulated by such other marketing agreement or order than is disposed of from such plant in the Minneapolis-St. Paul marketing area either on routes or through other pool plants; and

(b) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part;

(c) The handler of such milk shall make reports to the market administrator with respect to his total receipts and utilization or disposition of skim milk and butterfat at such times and in such manner as the market administrator may require and allow verification of such reports by the market administrator in accordance with § 1068.33.

(d) A handler, with respect to milk exempt from the terms of the Minneapolis-St. Paul order as provided in this section, if such milk is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

15. Section 1068.63 is revised to read as follows:

§ 1068.63 Butterfat in fluid skim milk.

For classification purposes, pursuant to §§ 1068.40 through 1068.46, butterfat in skim milk either disposed of to others or used in the manufacture of milk products (including filled milk) shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

16. In § 1068.64, subdivision (1) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1068.64 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1068.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant for an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1068.70(d) and a credit in the amount specified in § 1068.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price pursuant to § 1068.71 applicable at such location or at the Class II price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the

Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

17. Section 1068.83 is revised to read as follows:

§ 1068.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1068.62, 1068.64, 1068.84, and 1068.86 and out of which he shall make all payments due handlers pursuant to §§ 1068.85 and 1068.86: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

18. In § 1068.93, paragraphs (a) and (d) are revised to read as follows:

§ 1068.93 Termination of obligation.

(a) * * *

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)-(A) of the act, a petition claiming such money.

PART 1069—MILK IN THE DULUTH-SUPERIOR MARKETING AREA

1. In § 1069.7, paragraphs (a) and (b) are revised to read as follows:

§ 1069.7 Pool plant.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are pasteurized or packaged and from which there is disposed of during the month as Class I milk, except filled milk, on routes an amount equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is disposed of as Class I milk, except filled milk, on routes in the marketing area an amount equal to 10 percent or more of such total receipts: *Provided*, That such Class I sales distribution (not including filled milk) in the marketing area averages at least 500 pounds per day;

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

2. Section 1069.8 is revised to read as follows:

§ 1069.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

3. Section 1069.14 is revised to read as follows:

§ 1069.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk flavored milk, flavored milk drinks, filled milk, concentrated milk or milk drinks not in hermetically sealed cans, cream, and fluid mixtures of cream and milk or skim milk, including reconstituted milk or skim milk, but not including frozen

cream, aerated cream products, eggnog, or ice cream and frozen dessert mixes. This definition shall not include a product which contains six percent or more nonmilk fat (or oil).

4. A new § 1069.18 is added, to read as follows:

§ 1069.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1069.30, subparagraph (5) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1069.30 Reports of receipts and utilization.

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1069.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements showing the quantity of fluid milk products disposed of on routes (other than to pool plants) in the marketing area as Class I milk, and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(6) In § 1069.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1069.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

7. Section 1069.46 is revised to read as follows:

§ 1069.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1069.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1069.41 (b) (5);

(2) Subtract from the remaining pound of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim drinks (plain or flavored), cream or any milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a handler pursuant to § 1069.9 (d), receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk

products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1069.22(k) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned pursuant to § 1069.44(a);

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

8. Section 1069.61 is revised to read as follows:

§ 1069.61 Plants subject to other Federal orders.

(a) Except as set forth in paragraph (b) of this section, the provisions of this part shall not apply to a plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless:

(1) Such plant is qualified as a pool plant pursuant to § 1069.7 and a greater volume of Class I milk, except filled milk, is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order, or

(2) The Secretary determines that the applicable order should more appropriately be determined on some other basis.

(b) Each handler in his capacity as an operator of a plant which, pursuant to this section, is made partially exempt from the provisions of this part shall:

(1) With respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1069.30 through 1069.32) and allow verification of such reports by the market administrator; and

(2) If such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(i) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(ii) Compute the value of the quantity assigned in subparagraph (1) to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

9. In § 1069.62, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1069.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1069.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1069.70(e) and a credit in the amount specified in § 1069.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an

obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price pursuant to § 1069.71 at the same location or at the Class II price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

10. Section 1069.83 is revised to read as follows:

§ 1069.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1069.61, 1069.62, 1069.84, and 1069.86, and out of which he shall make payments to handlers pursuant to §§ 1069.85 and 1069.86: *Provided*, That any payments due to any handler shall be offset by any payments due such handler.

11. In § 1069.89, paragraphs (a) and (d) are revised to read as follows:

§ 1069.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1070—MILK IN CEDAR RAPIDS-IOWA CITY MARKETING AREA

1. Section 1070.10 is revised as follows:

§ 1070.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

(d) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which

is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (c) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except such plant shall be a nonpool plant during any month in which it would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1070.10 and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

2. Section 1070.11 is revised as follows:

§ 1070.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1070.13 is revised as follows:

§ 1070.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.10(c) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

4. Section 1070.15 is revised as follows:

§ 1070.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or

flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more non-milk fat (or oil).

5. A new § 1070.18 is added as follows:

§ 1070.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1070.30, paragraph (f) is revised as follows:

§ 1070.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

7. In § 1070.31, paragraph (c) (1) is revised as follows:

§ 1070.31 Other reports.

(c) * * *

(1) As required pursuant to § 1070.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and shall include a statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. In § 1070.32, paragraphs (b) and (c) are revised as follows:

§ 1070.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

9. In § 1070.44, paragraph (e) (5) is revised as follows:

§ 1070.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1070.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1070.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(iv) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, from an unregulated supply plant;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in ex-

cess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipt of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (i) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1070.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

11. Section 1070.61 is revised as follows:

§ 1070.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1070.10 and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1070.30 and 1070.31) and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in paragraph (a), of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day

after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1070.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1070.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1070.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1070.70(e) and a credit in the amount specified in § 1070.84 (b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1070.83 is revised as follows:

§ 1070.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1070.61, 1070.62, 1070.84, and 1070.86, and out of which he shall make all payments to handlers pursuant to §§ 1070.85 and 1070.86.

14. In § 1070.89, paragraphs (a) and (d) are revised as follows:

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

PART 1071—MILK IN THE NEOSHO VALLEY MARKETING AREA

1. In § 1071.7, the introductory text and paragraph (a) are revised to read as follows:

§ 1071.7 Pool plant.

"Pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area, except the plant of a producer-handler or a plant exempt pursuant to § 1071.61.

(a) Any plant, hereinafter referred to as a "distributing pool plant" from which:

(1) During the current delivery period there is distributed as Class I milk, except filled milk, on routes in the marketing area, an amount equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in subparagraph (2) of this paragraph; and

(2) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in subparagraph (2) of this paragraph as follows: (a) April through August, 30 percent; and (b) September through March, 45 percent; or

(3) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to subdivision (1) of this subparagraph; and

(4) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in subparagraph (1) of this paragraph, for each plant shall include all receipts of Grade A milk from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1071.9(c) (3) subject to the following provisions:

(i) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(ii) Milk received at a plant operated by a cooperative association from another cooperative association acting as a handler pursuant to § 1071.9(c) (2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

2. Section 1071.8 is revised to read as follows:

§ 1071.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

3. Section 1071.11 is revised to read as follows:

§ 1071.11 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who disposes of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

4. Section 1071.16 is revised to read as follows:

§ 1071.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, filled milk, flavored milk drinks, cream, cultured sour cream, and any mixture (except bulk ice cream mix, eggnog, and aerated cream) of cream and milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1071.17 is added to read as follows:

§ 1071.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. Section 1071.30 is revised to read as follows:

§ 1071.30 Reports of receipts and utilization.

On or before the 7th day after the end of each delivery period, each handler shall report to the market administrator in the detail and on forms prescribed by

the market administrator for each plant as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts for his account of producer milk;

(2) Milk and milk products (including filled milk) received from other pool plants and from a cooperative association which is a handler pursuant to § 1071.9(c);

(3) Other source milk; and

(4) Inventories on hand at the beginning and the end of the delivery period;

(b) The utilization of all skim milk and butterfat required to be reported by this section, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require; and

(d) Each handler specified in § 1071.9 (b) who operates a partially regulated distributing plant shall report as required in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. Section 1071.33 is revised to read as follows:

§ 1071.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat in producer milk and all other skim milk and butterfat in milk and milk products (including filled milk) handled during the month and in inventories at the beginning and end of the month.

(b) The weights of butterfat and skim milk in all milk and milk products (including filled milk) handled; and

(c) Payments to producers and cooperative associations.

8. In § 1071.44, subparagraph (5) of paragraph (c) is revised to read as follows:

§ 1071.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1071.46(a), subparagraphs (2), (4), (5), (7), and (8) are revised to read as follows:

§ 1071.46 Allocation of skim milk and butterfat classified.

* * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, from cooperative handlers pursuant to § 1071.9(c), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata

to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4) (v) or (5) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (v) or (5) (ii) of this paragraph;

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1071.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

10. Section 1071.61 is revised to read as follows:

§ 1071.61 Handlers subject to other orders.

In the case of any handler (as defined in this section) who the Secretary determines disposed of a greater portion of his milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act, or who otherwise is determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order, the provisions of this order shall not apply except as specified in paragraphs (a) and (b) of this section:

(a) Each handler operating a plant described above shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) Each handler operating a plant described above, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1071.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1071.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1071.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1071.70(d) and a credit in the amount specified in § 1071.93(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in filled milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. Section 1071.92 is revised to read as follows:

§ 1071.92 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.61, 1071.62, 1071.93, and 1071.95 and out of which he shall make payments to handlers pursuant to §§ 1071.94 and 1071.95: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

13. In § 1071.98, paragraphs (a) and (d) are revised to read as follows:

§ 1071.98 Termination of Obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

1. In § 1073.9, paragraph (a) is revised to read as follows:

§ 1073.9 Producer-handler.

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of

packaged fluid milk products from other order plants; and

2. In § 1073.12, subparagraph (1) of paragraph (a) is revised to read as follows:

§ 1073.12 Pool plant.

(a) * * *

(1) Disposes of through route disposition fluid milk products, except filled milk, in an amount equal to 25 percent or more during the months of March through July and 35 percent during all other months of such plant's total receipts of Grade A milk direct from dairy farmers, supply plants and cooperative associations in their capacity as a handler pursuant to § 1073.8(d) and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts. In any case in which the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

3. Section 1073.13 is revised to read as follows:

§ 1073.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

4. Section 1073.16 is revised to read as follows:

§ 1073.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, filled milk, concentrated milk disposed of for fluid consumption other than in hermetically sealed metal or glass containers, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored) "modified or fortified," including "dietary milk products" and reconstituted milk or skim milk, sour cream and sour cream products labeled Grade

A, cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains six percent or more nonmilk fat (or oil).

5. A new § 1073.19 is added to read as follows:

§ 1073.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1073.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1073.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities:

- (i) Of bulk fluid milk products on hand at the end of the month;
- (ii) Of packaged fluid milk products on hand at the end of the month; and
- (iii) Of route disposition of fluid milk products in the marketing area;
- (iv) Of in-area route disposition of filled milk; and
- (v) Of outside area route disposition of filled milk; and

(b) Each handler described in § 1073.8 (b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk and a statement showing the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area; and

7. In § 1073.33, paragraph (b) is revised to read as follows:

§ 1073.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

8. In § 1073.44, subparagraph (5) of paragraph (c) is revised to read as follows:

§ 1073.44 Transfers.

(c) * * *

(5) For purposes of this paragraph (c), if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products

shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class III milk; and

9. In § 1073.46, subparagraphs (2), (3), (4), (5), (6), (7), (8), and the introductory text of subparagraph (9) preceding subdivision (i), of paragraph (a) are revised to read as follows:

§ 1073.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in each of the following:

- (i) Other source milk in a form other than that of a fluid milk product;
- (ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and
- (iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;
- (iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II or III milk but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph;

(a) For which the handler requests Class III (or Class II) milk utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph in excess of similar transfers to such plant, if Class III (or Class II) milk utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (v) or (5) (ii) of this paragraph;

10. Section 1073.61 is revised to read as follows:

§ 1073.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(c) A supply plant meeting the requirements of § 1073.12(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to

plants regulated under this part, except during the months of December through July if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1073.30 through 1073.32) and allow verification of such reports by the market administrator;

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

11. In § 1073.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1073.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1073.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1073.70(g) and a credit in the amount specified in § 1073.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:
(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III milk price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price at the location of the nonpool plant less the value of such skim milk at the Class III price.

12. Section 1073.83 is revised to read as follows:

§ 1073.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.61, 1073.62, 1073.84, and 1073.86, and out of which he shall make all payments to handlers pursuant to §§ 1073.85 and 1073.86. Immediately after computing the uniform prices for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 1073.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

13. In § 1073.89, paragraphs (a) and (d) are revised to read as follows:

§ 1073.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall contain but need not be limited to, the following information:

(1) The amount of the obligation;
(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1075—MILK IN THE BLACK HILLS, S. DAK., MARKETING AREA

1. Section 1075.12 is revised to read as follows:

§ 1075.12 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 20 percent of the Grade A milk received at such plant from producers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year.

2. Section 1075.13 is revised to read as follows:

§ 1075.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1075.15 is revised to read as follows:

§ 1075.15 Producer-handler.

"Producer-handler" means any person who operates both a dairy farm(s) and a distributing plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging, and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such person in his capacity as a handler.

4. Section 1075.18 is revised to read as follows:

§ 1075.18 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, milk drinks (plain or flavored), cream or any mixture in fluid form of milk, skim milk, and cream (except ice cream mix, evaporated or condensed milk, a product which contains 6 percent or more nonmilk fat (or oil), and sterilized products packaged in hermetically sealed containers).

5. A new § 1075.23 is added to read as follows:

§ 1075.23 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so

that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1075.30, paragraph (f) is revised and a new paragraph (h) is added to read as follows:

§ 1075.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of the route disposition of Class I milk outside the marketing area and on routes in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(h) Each handler who operates a partially regulated distributing plant shall report as required in paragraphs (a) through (g) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include separate statements showing the quantity of fluid milk products disposed of on routes in the marketing area and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. Section 1075.32 is revised to read as follows:

§ 1075.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

(d) Payments to approved dairy farmers and cooperative associations.

8. In § 1075.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1075.44 Transfers.

(d) * * *

(5) For purposes of this paragraph if the transferee order provides for more than two classes of utilization skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. Section 1075.46 is revised to read as follows:

§ 1075.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1075.45, the market administrator shall determine the classification of milk received at each plant each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1075.41(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph as follows:

(i) From Class II milk the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c)(1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7)(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3)(iv), (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds

of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (3)(v) or (4)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of such divisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1075.27(k); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision

(ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned pursuant to § 1075.44;

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

10. Section 1075.61 is revised to read as follows:

§ 1075.61 Plants subject to other Federal orders.

(a) Except as set forth in paragraphs (b) and (c) of this section, the provisions of this part shall not apply to an other order plant during any month unless such plant is qualified as a pool plant pursuant to § 1075.12 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets in the Black Hills marketing area and to pool plants under this part than in the marketing area and to pool plants regulated pursuant to such other order;

(b) The operator of a plant specified in paragraph (a) of this section which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1075.30) and allow verification of such reports by the market administrator;

(c) Each handler operating a distributing plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1075.62, subdivision (i) of paragraph (a)(1), and paragraph (b) are revised to read as follows:

§ 1075.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) The obligation that would have been computed pursuant to § 1075.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted

average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1075.70(e) and a credit in the amount specified in § 1075.84(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11a. In § 1075.74, paragraph (a) is revised to read as follows:

§ 1075.74 Notification of handlers.

(a) The amount and value of milk or filled milk in each class pursuant to §§ 1075.46 and 1075.70 and the totals of such amounts and values;

12. Section 1075.83 is revised to read as follows:

§ 1075.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1075.61, 1075.62, 1075.84, 1075.85, and 1075.86; *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1075.89, paragraphs (a) and (d) are revised to read as follows:

§ 1075.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrators) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to § 8c(15)(A) of the act, a petition claiming such money.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.9 is revised to read as follows:

§ 1076.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

2. In § 1076.12, paragraphs (a) and (b) are revised to read as follows:

§ 1076.12 Pool plant.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers, cooperative associations pursuant to § 1076.8(d) and from supply plants is disposed of during the month on routes and not less than 15 percent of such receipts are disposed of as Class I milk, except filled milk, on routes in the marketing area; and

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and cooperative associations pursuant to § 1076.8(d) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

3. Section 1076.13 is revised to read as follows:

§ 1076.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

4. Section 1076.16 is revised to read as follows:

§ 1076.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, filled milk, milk drinks (plain or flavored), cream (sweet or sour) and any mixture in fluid form of skim milk and cream (except frozen cream, aerated cream, ice cream, ice cream and frozen dessert

mixes, a product which contains six percent or more nonmilk fat (or oil), and sterilized products in hermetically sealed containers).

5. Section 1076.17 is revised to read as follows:

§ 1076.17 Route.

"Route" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

6. A new § 1076.19 is added to read as follows:

§ 1076.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than six percent nonmilk fat (or oil).

7. In § 1076.30, subparagraph (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1076.30 Reports of receipts and utilization.

(a)

(3) The utilization in each class of the quantities required to be reported, including a separate statement of the disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1076.3 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes (other than to pool plants) in the marketing area as Class I milk, and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

8. Section 1076.33 is revised to read as follows:

§ 1076.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization in whatever form of all skim milk and butterfat required to be reported pursuant to § 1076.30;

(b) The weight and butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

(d) Payments to producers and co-operative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

9. In § 1076.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1076.44 Transfers.

(f)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. Section 1076.46 is revised to read as follows:

§ 1076.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1076.45, the market administrator shall determine the classification of producer milk received by each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1076.41(b)(5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1076.27(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds

of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1076.44(a);

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from a cooperative association in its capacity as a handler pursuant to § 1076.8(d) according to the classification assigned pursuant to § 1076.44(e); and

(11) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

11. Section 1076.61 is revised to read as follows:

§ 1076.61 Plants subject to other Federal orders.

The provisions of this part, except §§ 1076.32 through 1076.34 and as specified elsewhere in this section, shall not apply to a handler with respect to the operation of plants described in paragraph (a) or (b).

(a) A plant qualified pursuant to § 1076.12(a) from which a lesser volume of fluid milk products, except filled milk, is disposed of in the Eastern South Dakota marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any plant qualified pursuant to § 1076.12(b) for any portion of the period of March through June, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act;

(c) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1076.62, subdivision (1) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1076.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1076.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1076.70(e) and a credit in the amount specified in § 1076.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products or in filled milk disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1076.76 is revised to read as follows:

§ 1076.76 Notification of handlers.

On or before the 12th day of each month the market administrator shall notify each handler with respect to each of his pool plants:

(a) The amount and value of milk (including filled milk) in each class computed pursuant to §§ 1076.46 and 1076.70 and the totals of such amounts and values;

(b) The uniform price computed pursuant to § 1076.72 or § 1076.73, whichever is applicable;

(c) The amount, if any, due such handler from the producer-settlement fund; and

(d) The total amounts to be paid by such handler pursuant to §§ 1076.82 and 1076.85.

14. Section 1076.81 is revised to read as follows:

§ 1076.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1076.61, 1076.62, 1076.82, and 1076.84 and out of which he shall make all payments to handlers pursuant to §§ 1076.83 and 1076.84: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from each handler.

15. In § 1076.86, paragraphs (a) and (d) are revised to read as follows:

§ 1076.86 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which

the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to § 8c(15)(A) of the Act, a petition claiming such money.

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

1. Section 1078.10 is revised as follows:

§ 1078.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk, skim milk or cream are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided*, That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk, skim milk or cream from such plant would be allocated to Class I milk pursuant to the procedure specified in § 1078.46(a)(3) and the corresponding step of § 1078.46(b) at a distributing plant which is a pool plant.

2. Section 1078.11 is revised as follows:

§ 1078.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1078.15 is revised as follows:

§ 1078.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1078.19 is added as follows:

§ 1078.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1078.30, paragraph (f) is revised as follows:

§ 1078.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk.

6. In § 1078.32, paragraphs (b) and (c) are revised as follows:

§ 1078.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

7. In § 1078.44, paragraph (e)(5) is revised as follows:

§ 1078.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1078.46, subparagraphs (3), (4), and (7) of paragraph (a) are revised as follows:

§ 1078.46 Allocation of skim milk and butterfat classified.

(a) * * *

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, from an unregulated supply plant;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4)(ii) of this paragraph;

9. Section 1078.61 is revised as follows:

§ 1078.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant is qualified as a pool plant pursuant to § 1078.10 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order. *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization

tion or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1078.30) and allow verification of such reports by the market administrator.

10. In § 1078.86, paragraphs (a) and (d) are revised as follows:

§ 1078.86 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15) (A) of the act, a petition claiming such money.

PART 1079—MILK IN THE DES MOINES, IOWA, MARKETING AREA

1. Section 1079.10 is revised as follows:

§ 1079.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not

less than 15 percent of such receipts or an average of not less than 7,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year: *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

2. Section 1079.11 is revised as follows:

§ 1079.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

3. Section 1079.13 is revised as follows:

§ 1079.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk

from other dairy farmers or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

4. Section 1079.15 is revised as follows:

§ 1079.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), filled milk, cream or any mixture in fluid form of skim milk and cream (except aerated cream products, sour cream, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1079.19 is added as follows:

§ 1079.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1079.30, paragraphs (f) and (g) are revised as follows:

§ 1079.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(g) Each handler operating a partially regulated distributing plant shall report as required in this section substituting receipts from dairy farmers for receipts of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. In § 1079.32, paragraphs (b) and (c) are revised as follows:

§ 1079.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk, cream, and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

8. In § 1079.44, paragraph (e) (5) is revised as follows:

§ 1079.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1079.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1079.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract successively from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv), (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3) (v) or (4) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1079.27(1); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

10. Section 1079.61 is revised as follows:

§ 1079.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a handler who operates a plant specified in paragraph (a) of this section except as specified in paragraphs (b) and (c):

(a) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under § 1079.10 and to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1079.30 and 1079.31) and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in paragraph (a), of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1079.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1079.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1079.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1079.70(e) and a credit in the amount specified in § 1079.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. Section 1079.83 is revised as follows:

§ 1079.83 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1079.61, 1079.62, 1079.84, 1079.85, and 1079.86: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

13. In § 1079.89, paragraphs (a) and (d) are revised as follows:

§ 1079.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraph (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator received the handler's utilization report on skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the

calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

PART 1090—MILK IN THE CHATTA-NOOGA, TENN., MARKETING AREA

1. In § 1090.7, paragraphs (a) and (b) are revised to read as follows:

§ 1090.7 Pool plant.

(a) Milk distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk and from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers is disposed of during the month on routes and from which Class I milk, except filled milk, equal to not less than 15 percent of its total Class I disposition, except filled milk, is disposed of during the month on routes in the marketing area;

(b) Milk supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March-July a written request for withdrawal; or

2. Sections 1090.8, 1090.10, 1090.12, and 1090.14 are revised to read as follows:

§ 1090.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant,

from which fluid milk products are shipped to a pool plant.

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which Class I milk is disposed of on routes in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no nonfluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.12 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk and skim milk drinks, yogurt, cream (sweet or sour) or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, a product which contains 6 percent or more nonmilk fat (or oil), ice cream and ice milk mix and aerated cream).

§ 1090.14 Route.

"Route" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of milk or any milk product (including filled milk) classified as Class I milk pursuant to § 1090.41(a) other than a delivery to any milk or filled milk processing plant.

3. A new § 1090.20 is added and reads as follows:

§ 1090.20 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

4. In § 1090.30, paragraphs (a) (5) and (b) are revised to read as follows:

§ 1090.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including separate statements as to the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1090.9 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in

lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and in quantity of reconstituted skim milk in such disposition.

5. In § 1090.44, the introductory text of paragraph (d) and subparagraph (5) of paragraph (f) are revised to read as follows:

§ 1090.44 Transfers.

(d) As Class I milk, if transferred in the form of milk, skim milk, or filled milk in bulk or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(f) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

6. In § 1090.46(a), subparagraphs (1-a), (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1090.46 Allocation of skim milk and butterfat classified.

(a) * * *

(1-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products, except filled milk made from reconstituted skim milk, received from an unregulated supply plant or the pounds of skim milk classified as Class I milk and transferred or diverted during the month to such plant, whichever is less;

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and re-

ceipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (1-a) and (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (1-a), (3) (iv) and (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) and (4) (ii) of this paragraph:

7. In § 1090.61, paragraph (a) is revised and a new paragraph (c) is added and reads as follows:

§ 1090.61 Plants subject to other Federal orders.

(a) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, is disposed of from

such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tennessee, marketing area than in the marketing area regulated pursuant to such order

(c) Each handler operating a plant described in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

8. In § 1090.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1090.62 Obligations of handler operating a partially regulated distributing plant.

(a) *

(1) (i) The obligation that would have been computed pursuant to § 1090.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1090.70(e) and a credit in the amount specified in § 1090.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class II price.

9. Section 1090.81 is revised to read as follows:

§ 1090.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.61, 1090.62, 1090.82, and 1090.84, and out of which he shall make all payments pursuant to §§ 1090.83 and 1090.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

10. In § 1090.87, paragraph (a) is revised to read as follows:

§ 1090.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation.

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled, and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

PART 1094—MILK IN THE NEW ORLEANS, LA., MARKETING AREA

1. Section 1094.7 is revised to read as follows:

§ 1094.7 Route.

"Route" means any delivery of a fluid milk product from a milk processing plant to wholesale or retail outlets (including any delivery by a vendor and from a plant store or through a vending machine) other than a delivery to any milk or filled milk receiving and/or processing plant.

1a. In § 1094.10, paragraph (a) is revised to read as follows:

§ 1094.10 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1094.63(a), from which during the month:

(1) Disposition in the marketing area of fluid milk products, except filled milk, on routes is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, cooperatives in their capacities as handlers pursuant to § 1094.12(d) and supply plants; and

(2) Total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of receipts from dairy farmers, cooperatives in their capacities as handlers pursuant to § 1094.12(d) and supply plants;

2. Section 1094.11 is revised to read as follows:

§ 1094.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

3. Section 1094.13 is revised to read as follows:

§ 1094.13 Producer-handler.

Producer-handler means a dairy farmer who operates a distributing plant at which no fluid milk or fluid milk products are received during the month except his own production or transfers from

a pool plant(s) and which has no receipts of nonfluid milk products disposed of as Class I milk.

4. Section 1094.17 is revised to read as follows:

§ 1094.17 Fluid milk product.

Fluid milk product means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, filled milk, concentrated milk or skim milk, fortified milk or skim milk, flavored milk, flavored milk drinks (including eggnog), yogurt, cream (other than frozen storage cream), cultured sour cream, sour cream products labeled Grade A and any mixture of cream and milk or skim milk in fluid form (other than ice cream mixes, other frozen dessert mixes and sterilized products contained in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1094.19a is added to read as follows:

§ 1094.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1094.30, subparagraph (6) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1094.30 Reports of receipts and utilization.

(a) * * *

(6) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, including a separate statement with respect to Class I milk disposed of inside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk.

(b) Each handler specified in § 1094.12 (b) who operates a partially regulated distributing plant shall report in the same manner as required in paragraph (a) of this section with respect to all receipts and utilization, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk and base and excess milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

7. In § 1094.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1094.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1094.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1094.46 Allocation of skim milk and butterfat in each class.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, receipts from a cooperative association in its capacity as a handler pursuant to § 1094.12(d) and

receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler; and

(iii) Receipts of milk by diversion from an other order plant for which Class II utilization was requested by the receiving handler and by the diverting handler under the other order;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (ii) of this paragraph:

9. In § 1094.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1094.62 Obligations of handlers operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1094.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1094.70(e) and a credit in the amount specified in § 1094.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of

as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

10. Section 1094.63 is revised to read as follows:

§ 1094.63 Plants subject to other Federal orders.

The handler operating a plant specified in paragraphs (a) or (b) of this section shall be exempt from all provisions of this part except §§ 1094.32, 1094.34 and 1094.35 and as specified in paragraph (c):

(a) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless a greater volume of Class I milk, except filled milk, is disposed of during the month on routes in the New Orleans marketing area than in the marketing area defined in such other order;

(b) Any supply plant which would be subject to the classification and pricing provision of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to § 1094.10(c);

(c) Each handler operating a plant specified in paragraph (a) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this

paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. Section 1094.81 is revised to read as follows:

§ 1094.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.62, 1094.63, 1094.82, and 1094.84, and out of which he shall make all payments pursuant to §§ 1094.83 and 1094.84: *Provided*, That, any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1094.87, paragraph (a) is revised to read as follows:

§ 1094.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers; or if the obligation is payable to the market administrator, the account for which it is to be paid.

PART 1096—MILK IN THE NORTHERN LOUISIANA MARKETING AREA

1. Section 1096.10 is revised to read as follows:

§ 1096.10 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1096.13, paragraphs (a) and (b) are revised to read as follows:

§ 1096.13 Pool plant.

(a) A distributing plant other than the plant of a producer-handler from which a volume of Class I milk, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and a cooperative association in its capacity as a handler pursuant to § 1096.8(d) is disposed of during the month on routes unless the volume so disposed of in the marketing area is less than 10 percent of such receipts or less than 1,500 pounds on a daily average;

(b) A supply plant from which a volume of fluid milk products not less than 50 percent of its Grade A receipts from dairy farmers and from a cooperative association in its capacity as a handler pursuant to § 1096.8(d) is transferred during the month to a distributing plant(s) from which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants is disposed of on routes during the month and the volume so disposed of in the marketing area is at least 10 percent of such receipts or a daily average of 1,500 pounds whichever is less: *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for the remaining months through August; and

3. Section 1096.15 is revised to read as follows:

§ 1096.15 Fluid milk product.

"Fluid milk product" means all the skim milk (including concentrated and reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, flavored milk and milk drinks, filled milk, cream, cultured sour cream and any mixture of cream and milk or skim milk (except egg nog, aerated cream products, ice cream, ice cream mix, ice milk, ice milk mix, frozen desserts, frozen cream, evaporated milk, condensed milk, sterilized milk products packaged in hermetically sealed containers and any product which contains 6 percent or more non-milk fat (or oil)): *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content.

4. Section 1096.21 is revised to read as follows:

§ 1096.21 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and

pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other plant nor a producer-handler plant.

5. A new § 1096.22 is added to read as follows:

§ 1096.22 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1096.30, subparagraphs (2) and (3) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1096.30 Reports of receipts and utilization.

(a) * * *

(2) Utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the route disposition of fluid milk products on routes outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(3) Such other information with respect to the receipts and utilization of milk and milk products (including filled milk) as the market administrator may require;

(b) Each handler specified in § 1096.8 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk;

7. In § 1096.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1096.44 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a

class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1096.46, subparagraphs (2), (3), (4), (5), (6), (7), and the introductory text to subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1096.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order or from a plant exempt pursuant to § 1096.60(b);

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) (a) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which

are in excess of the pounds of skim milk determined as follows:

(1) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(2) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(3) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(b) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool

plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made:

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (3)(v) or (4)(iii) of this paragraph pursuant to the following procedure:

9. Section 1096.61 is revised to read as follows:

§ 1096.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A distributing plant meeting the requirements of § 1096.13(a) which also meets the pooling requirements of another Federal order and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, and which was fully subject to the classification and pooling provisions of such other order;

(b) A distributing plant meeting the requirements of § 1096.13(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order;

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(d) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to

Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

10. In § 1096.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1096.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1096.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1096.70(e) and a credit in the amount specified in § 1096.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. Section 1096.81 is revised to read as follows:

§ 1096.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1096.61, 1096.62, 1096.82, and 1096.84 and out of which he shall make payments to handlers pursuant to §§ 1096.83 and 1096.84: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

12. In § 1096.87, paragraphs (a) and (b) are revised to read as follows:

§ 1096.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1097—MILK IN THE MEMPHIS, TENN., MARKETING AREA

1. Section 1097.7 is revised to read as follows:

§ 1097.7 Fluid milk plant.

(a) Any milk processing or packaging plant from which a volume of Class I

milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant is disposed of during the month as Class I milk on route disposition in the marketing area;

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

1a. Section 1097.8 is revised to read as follows:

§ 1097.8 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

2. Section 1097.9 is revised to read as follows:

§ 1097.9 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which Class I milk in consumer-type packages or dispenser units is distributed on routes in the marketing area during the month.

(d) "Unregulated supply plants" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not an other order plant nor a producer-handler plant.

3. Section 1097.16 is revised to read as follows:

§ 1097.16 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, plain or flavored milk drinks, sweet and sour cream (except aerated cream, frozen cream, and sterilized cream packaged in hermetically sealed containers not labeled as Grade A); filled milk; and any mixture in fluid form of milk, skim milk, and cream except mixes for frozen dairy products. Egg nog and sour cream mixtures to which cheese or any food substance other than a milk product has been added shall be considered as fluid milk products only if disposed of under a

Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1097.19 is added to read as follows:

§ 1097.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1097.30, paragraph (e) is revised to read as follows:

§ 1097.30 Reports of receipts and utilization.

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk.

6. In § 1097.32, paragraphs (b) and (c) are revised to read as follows:

§ 1097.32 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled; and

(c) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of each month.

7. In § 1097.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1097.44 Transfers.

(f) * * *

(5) For purposes of this paragraph (f), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1097.46, subparagraphs (3), (4), and (7) of paragraph (a) are revised to read as follows:

§ 1097.46 Allocation of skim milk and butterfat classified.

(a) * * *

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from fluid milk plants of other handlers, from cooperative associations which are handlers pursuant to § 1097.10(c), and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (ii) of this paragraph;

9. Section 1097.61 is revised to read as follows:

§ 1097.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraph (a) or (b) of this section, the provisions of this part shall not apply except that such handler shall with respect to his total receipts and disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may prescribe and allow verification of such reports by the market administrator:

(a) A plant qualified pursuant to § 1097.7 (a) or (b) which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk,

was disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as Class I route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants; *Provided*, That a plant which was a fluid milk plant pursuant to § 1097.7 (a) or (b) under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as Class I milk on routes in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this paragraph; and

(b) A plant qualified pursuant to § 1097.7 (a) or (b) which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as Class I route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as Class I route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater Class I disposition under the Memphis, Tenn., order.

10. In § 1097.98, paragraphs (a) and (d) are revised to read as follows:

§ 1097.98 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or

if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1098—MILK IN THE NASHVILLE, TENN., MARKETING AREA

1. Section 1098.9 is revised to read as follows:

§ 1098.9 Producer-handler.

"Producer-handler" means a person who:

- (a) Produces milk and operates an approved plant;
- (b) Uses no nonfluid milk products for reconstitution into fluid milk products; and
- (c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

2. In § 1098.11, paragraphs (a) and (b) are revised to read as follows:

§ 1098.11 Pool plant.

(a) A plant at which during the month fluid milk products are processed or packaged and from which (1) disposition of fluid milk products, except filled milk, on routes is at least 50 percent of total receipts of Grade A milk and (2) fluid milk products, except filled milk, distributed on routes in the marketing area are at least 15 percent of its total disposition of fluid milk products, except filled milk, on routes.

(b) A plant from which during the month there has been delivered to plants described in paragraph (a) of this section fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk from approved dairy farmers: *Provided*, That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July, unless the operator of such plant files with the market administrator a written request for withdrawal prior to the first day of the month for which nonpool status is requested, in which case the plant shall remain a nonpool

plant until it again qualifies for pool status.

3. Sections 1098.12, 1098.15, and 1098.18 are revised to read as follows:

§ 1098.12 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks, yogurt, cream (sweet and sour), or any mixture in fluid form of skim milk and butterfat components of milk (except sterilized products packaged in hermetically sealed containers, eggnog, ice cream mix, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream and sour cream mixtures to which cheese or any food substance other than a milk product has been added and which is not disposed of under a Grade A label).

§ 1098.18 Route.

"Route" means any delivery (including delivery by a vendor or a sale from a plant store) of fluid milk products other than a delivery to a milk or filled milk processing plant.

4. A new § 1098.19 is added and reads as follows:

§ 1098.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than six percent nonmilk fat (or oil).

5. In § 1098.30, paragraphs (a) and (e) are revised to read as follows:

§ 1098.30 Reports of receipts and utilization.

(a) The quantities of skim milk and butterfat contained in producer milk (showing separately such milk received

from a cooperative association pursuant to § 1098.8(c)), except that a handler as specified in § 1098.8(d) who operates a partially regulated distributing plant shall report receipts of Grade A milk from dairy farmers in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. Section 1098.33 is revised to read as follows:

§ 1098.33 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of skim milk and butterfat, and shall, during the usual hours of business, make available to the market administrator, or his representative, such records and facilities as will enable the market administrator to (a) verify the receipts and utilization of all skim milk and butterfat, and in case of errors or omissions, ascertain the correct figures; (b) weigh, sample and test butterfat content of all milk and milk products (including filled milk) handled; (c) verify deductions authorized by producers and the disbursement of moneys so deducted; and (d) make such examinations of operations, equipment, and facilities as the market administrator deems necessary.

7. In § 1098.41(b), subparagraph (3-a) is revised to read as follows:

§ 1098.41 Classes of utilization.

(b)

(3-a) Disposed of in bulk fluid milk products to bakeries, candy factories, soup factories and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products (including filled milk);

8. In § 1098.44, the introductory text of paragraph (d) and and subparagraph (5) of paragraph (e) are revised to read as follows:

§ 1098.44 Transfers.

(d) As Class I milk, if transferred in bulk as milk, filled milk, skim milk or cream or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment

resulting from subparagraph (3) of this paragraph:

(e)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1098.46(a), subparagraphs (2), (3), (4), and (7) and the introductory text of subparagraph (8) are revised to read as follows:

§ 1098.46 Allocation of skim milk and butterfat classified.

(a)

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in pro-

ducer milk, receipts from pool plants of other handlers and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) and (4)(ii) of this paragraph;

10. Section 1098.80 is revised to read as follows:

§ 1098.80 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.81, 1098.87, 1098.91, and 1098.92 and out of which he shall make appropriate payments required pursuant to §§ 1098.82 and 1098.87.

11. In § 1098.88, paragraphs (a) and (d) are revised to read as follows:

§ 1098.88 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligations, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler

any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

12. Section 1098.91 is revised to read as follows:

§ 1098.91 Handlers subject to other Federal orders.

(a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this part shall not apply to a handler with respect to the operation of a plant during any month in which the milk at such plant would be subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the Act and in which the disposition of fluid milk products, except filled milk, from such plant in the other Federal marketing area exceeds that in the Nashville, Tenn., marketing area: *Provided*, That on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions;

(b) Each handler operating a plant described in paragraph (a) of this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator; and

(c) Each handler operating a plant described in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1098.92, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1098.92 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1098.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1098.70(e) and a credit in the amount specified in § 1098.81(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class II price.

PART 1099—MILK IN THE PADUCAH, KY., MARKETING AREA

1. Section 1099.8 is revised to read as follows:

§ 1099.8 Pool plant.

"Pool plant" means:
(a) A distributing plant from which 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from cooperative associations in their capacity as handlers pursuant to § 1099.10(e) and fluid milk products, except filled milk, from other plants is disposed of as Class I milk, except filled milk, on route disposition during the month and from which a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less, is disposed of as fluid milk products, except filled milk, on route disposition in the marketing area: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month; or

(b) A distributing plant or supply plant from which the volume of milk, skim milk and cream shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as Class I milk, except filled milk, on route disposition is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from cooperative associations in their capacity as handlers pursuant to § 1099.10(e) and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section, milk, skim milk and cream equal to at least 75 percent of its receipts of milk from such dairy farmers and cooperative associations in their capacity as handlers pursuant to § 1099.10(e) in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso.

2. Section 1099.9 is revised to read as follows:

§ 1099.9 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packagers or dispenser units are distributed on route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

3. Section 1099.15 is revised to read as follows:

§ 1099.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk and flavored milk drinks (modified or fortified, including dietary products) and reconstituted milk or skim; filled milk; concentrated milk not sterilized in hermetically sealed containers; cream, sweet and sour; and mixtures of cream and milk or skim milk but not including the following: Frozen cream, aerated cream products, cultured sour cream mixtures other than sour cream, eggnog and boiled custard, ice cream, and ice cream and ice milk mixes, and cream or mixtures of cream with milk or skim milk sterilized in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

3a. Section 1099.16 is revised to read as follows:

§ 1099.16 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

4. A new § 1099.19 is added to read as follows:

§ 1099.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. Section 1099.30 is revised to read as follows:

§ 1099.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, reports for such month shall be made to the market administrator in the detail and on forms prescribed by the market administrator:

(a) Each handler other than one specified in § 1099.10(b) shall report the following:

(1) The quantities of skim milk and butterfat contained in all receipts at each of his distributing and supply plants of (i) producer milk, showing separately that from cooperative associations pursuant to § 1099.10(e), (ii) in fluid milk products received from pool plants, and (iii) other source milk;

(2) The quantities of skim milk and butterfat contained in produced milk diverted to nonpool plants pursuant to § 1099.13, the names of the producers so diverted, and the plant to which diverted;

(3) The utilization of all skim milk and butterfat required to be reported pursuant to paragraphs (1) and (2) of this paragraph, including a statement showing the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(4) Inventories of Class I milk on hand at the beginning and end of the month;

(5) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer;

(6) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer; and

(7) Each handler with respect to fluid milk products disposed of for animal feed or dumped shall report to the market administrator such information and at such time as a market administrator may require.

(b) Each handler specified in § 1099.10(b) shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk and such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

6. Section 1099.33 is revised to read as follows:

§ 1099.33 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of milk and milk products (including filled milk) and shall during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The amount and nature of deductions authorized by producers and disbursements of any money so deducted; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of the month.

7. In § 1099.43, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1099.43 Transfers.

(d) * * *

(5) For purposes of this paragraph (d), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1099.45, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are amended to read as follows:

§ 1099.45 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an

order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, and dairy farmers who are not producers;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (3)(v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and dairy farmers who are not producers which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph;

9. Section 1099.61 is revised to read as follows:

§ 1099.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section, the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) A distributing plant qualified pursuant to § 1099.8 which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as Class I route disposition in the marketing area regulated by the other order than as Class I route disposition in the Paducah, Ky., marketing area: *Provided*, That such a distributing plant

which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this paragraph: *And provided further*, on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I route dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I route disposition made under limited term contracts to governmental bases and institutions;

(b) A distributing plant qualified pursuant to § 1099.8 which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Paducah marketing area as Class I route disposition than as Class I route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation even though such plant has greater such Class I route disposition in the marketing area of the Paducah, Ky., order;

(c) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of § 1099.8(b) during the preceding August through January period;

(d) The operator of a plant specified in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

10. In § 1099.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1099.62 Obligations of handler operating a partially regulated distributing plant.

(a) *

(1)(i) The obligation that would have been computed pursuant to § 1099.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1099.70(e) and a credit in the amount specified in § 1099.82(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on route disposition in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher, and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

11. Section 1099.81 is revised to read as follows:

§ 1099.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.61, 1099.62, 1099.82, and 1099.84 shall be deposited in this fund, and all payments made pursuant to §§ 1099.83 and 1099.84 shall be made out of this fund: *Provided*, That payments due to any handler shall be offset by payments due from such handler; and

(b) All amounts subtracted pursuant to § 1099.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1099.80 in accordance with the requirements of § 1099.71(i).

12. In § 1099.89, paragraphs (a) and (d) are revised to read as follows:

§ 1099.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1101—MILK IN KNOXVILLE, TENN., MARKETING AREA

1. Sections 1101.7, 1101.9, 1101.10, and 1101.17 are revised to read as follows:

§ 1101.7 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and an approved plant from which Class I milk is disposed of on routes in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no nonfluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging and distribution business are the personal enterprise and risk of such person.

§ 1101.9 Pool plant.

"Pool plant" means:

(a) An approved plant from which a volume of Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk and milk and skim milk from other pool plants is disposed of during the month on routes (including routes operated by vendors) to retail or wholesale outlets (including plant stores): *Provided*, That not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area; and

(b) An approved plant from which at least 50 percent of the hundredweight of its producer milk received during the month is shipped in the form of milk, skim milk or cream to a plant qualified pursuant to paragraph (a) of this section and classified as Class I milk: *Provided*, That if such shipments amount to not less than 65 percent of the producer milk of such plant during each of the preceding months of August through February, such plant may, upon written application to the market administrator on or before March 1 of any year be designated as a pool plant for the months of March through July of such year.

§ 1101.10 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant,

from which fluid milk products are shipped to a pool plant.

§ 1101.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks, cream, and any cream product except frozen cream and ice cream mix. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. A new § 1101.18 is added to read as follows:

§ 1101.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, culture, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product including stabilizers emulsifiers or flavoring resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

3. In § 1101.30, paragraph (a) (5) and (b) are revised to read as follows:

§ 1101.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1101.11(b) who operates a partially regulated distributing plant, shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition.

4. Section 1101.32 is revised to read as follows:

§ 1101.32 Records and facilities.

Each handler shall keep adequate records of receipts and utilization of skim milk and butterfat and shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to (a) verify the receipts and utilization of all skim milk and butterfat and, in case of errors or omissions, ascertain the correct figures; (b) weigh, sample, and test for butterfat content all milk and milk products (including filled milk) handled; (c) verify payment to producers; and (d) make such examination of operations, equipment, and facilities, as are necessary and essential to the proper administration of this subpart or any amendments thereto.

5. In § 1101.44, the introductory text of paragraph (c) and subparagraph (5) of paragraph (d) are revised to read as follows:

§ 1101.44 Transfers.

(c) As Class I milk, if transferred in bulk in the form of milk, filled milk, skim milk or cream or diverted to a nonpool plant that is neither an order plant nor a producer-handler plant unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

6. In § 1101.46(a), subparagraphs (2), (3), (5), (6), and (8) and the introductory text of subparagraph (9) are revised to read as follows:

§ 1101.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in receipts of packaged fluid milk products, except filled milk made from reconstituted skim milk, from an unregulated supply plant or the pounds of skim milk classified as Class I milk and transferred during the month to such nonpool plant, whichever is less;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (5) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim

milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (2) and (5)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (5) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an order plant that were not subtracted pursuant to subparagraph (5) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants, excluding a quantity equal to the pounds of skim milk subtracted pursuant to subparagraphs (2), (5)(iv), and (6)(i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (5)(v) and (6)(ii) of this paragraph:

7. Section 1101.81 is revised to read as follows:

§ 1101.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1101.82, 1101.84, 1101.91, and 1101.93, and out of which he shall make all payments pursuant to §§ 1101.83 and 1101.84; *Provided*, That payments due to any handler shall be offset by payments due from such handler.

8. In § 1101.89, paragraphs (a) and (d) are revised to read as follows:

§ 1101.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart, shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the act, a petition claiming such money.

9. In § 1101.91, paragraph (a) is revised and a new paragraph (c) is added and reads as follows:

§ 1101.91 Plants subject to other Federal orders.

(a) Any pool plant qualified pursuant to § 1101.9(a) which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless the Secretary determines that more Class I milk, except filled milk, is disposed of from such plant on routes to retail or wholesale outlets in the Knoxville, Tennessee, marketing areas than is so disposed of in the marketing area regulated pursuant to such other order.

(c) Each handler operating a plant described in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

10. In § 1101.92, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1101.92 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1101.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, excepted that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1101.70(e) and a credit in the amount specified in § 1101.82(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the loca-

tion of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the location of the nonpool plant less the value of such skim milk at the Class II price.

PART 1102—MILK IN THE FORT SMITH, ARK., MARKETING AREA

1. Section 1102.7 is revised to read as follows:

§ 1102.7 Approved plant.

"Approved plant" means any milk plant, except the plant of a producer-handler or a plant exempt pursuant to § 1102.61, approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

2. Section 1102.8 is revised to read as follows:

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing or processing plant other than an approved plant. The following categories of unapproved plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means an unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

3. Section 1102.9 is revised to read as follows:

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores);

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted to an unapproved plant for the account of such cooperative association.

4. Section 1102.16 is revised to read as follows:

§ 1102.16 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, fla-

vored milk, flavored milk drinks, filled milk, cream, cultured sour cream and any mixture of cream and milk or skim milk (except bulk ice cream mix.) This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1102.17 is added to read as follows:

§ 1102.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1102.33, paragraphs (b) and (d) are revised to read as follows:

§ 1102.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled milk) on hand at the beginning and end of each month.

7. In § 1102.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1102.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

8. In § 1102.46, subparagraphs (3), (4), and (6) of paragraph (a) are revised to read as follows:

§ 1102.46 Allocation of skim milk and butterfat classified.

(3) Subtract in the order specified below the pound of skim milk remaining in each class, in series beginning with Class II the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(4) Subtract in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from approved plants of other handlers, and receipts in bulk from other order plants;

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (ii) of this paragraph;

9. Section 1102.61 is revised to read as follows:

§ 1102.61 Milk priced under other Federal orders.

In the case of any handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the act, the provisions of this part shall not apply except that:

(a) The handler shall, with respect to his total receipts of skim milk and butterfat make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

10. In § 1102.85, paragraphs (a) and (d) are revised to read as follows:

§ 1102.85 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of paragraphs (b) and (c) of this section, terminates 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall

contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the act, a petition claiming such money.

PART 1103—MILK IN THE MISSISSIPPI MARKETING AREA

1. Section 1103.8 is revised to read as follows:

§ 1103.8 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment or facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

2. In § 1103.11, paragraphs (a) and (b) are revised to read as follows:

§ 1103.11 Pool plant.

(a) A distributing plant, other than that of a producer-handler or one described in § 1103.61, from which during the month route disposition of fluid milk products, except filled milk, is not less than 50 percent of its total receipts of Grade A milk and the volume so disposed of in the marketing area is at least 20 percent of the total route disposition of fluid milk products, except filled milk, or a daily average during the month of 7,000 pounds, whichever is less;

(b) A supply plant from which a volume of fluid milk products, except filled milk, amounting to not less than 50 percent of the Grade A milk received at such plant from dairy farmers is transferred during the month to a distributing

plant(s) from which a volume of Class I milk, except filled milk, amounting to not less than 50 percent of its receipts of Grade A milk from dairy farmers and from other plants is disposed of as route disposition during the month and the volume so disposed of in the marketing area is at least 20 percent of its total Class I route disposition (not including filled milk) or a daily average during the month of 7,000 pounds, whichever is less: *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for the remaining months through August; and

3. Section 1103.12 is revised to read as follows:

§ 1103.12 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

4. Section 1103.14 is revised to read as follows:

§ 1103.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant which, during the month, received no other source milk (except own production), producer milk, or fluid milk products from a pool plant: *Provided*, That such person establishes that the maintenance, care and management of all resources necessary to produce the entire volume of fluid milk products handled and all facilities necessary for operations as a handler are each the personal enterprise and risk of such person.

5. Section 1103.18 is revised to read as follows:

§ 1103.18 Fluid milk product.

"Fluid milk product" means all the skim milk (including reconstituted skim

milk and concentrated skim milk, other than bulk condensed) and butterfat in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, eggnog, yogurt, cream (sweet or sour) and any mixture in fluid form of cream and skim milk or milk (except aerated cream, frozen storage cream, ice cream, ice cream mixes, frozen ice milk, ice milk mixes, frozen dessert and mixes, sterilized products contained in hermetically sealed cans, and any product which contains 6 percent or more nonmilk fat (or oil)). *Provided*, That when any such milk product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content.

6. A new § 1103.19a is added to read as follows:

§ 1103.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1103.30, subparagraph (2) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1103.30 Reports of receipts and utilization.

(a) * * *

(2) Utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the route disposition of fluid milk products outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1103.13 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk;

8. In § 1103.33, paragraphs (b) and (c) are revised to read as follows:

§ 1103.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk and milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk and milk products (including filled

milk) on hand at the beginning and end of each month; and

9. In § 1103.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1103.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1103.46, subparagraphs (2), (2-a), (3), (4), (5), (6), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1103.46 Allocation of skim milk and butterfat classification.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from un-

regulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (exclusive of Class I transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (1) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler; and

(iv) The pounds of skim milk in receipts of milk by diversion from an other order plant for which Class II utilization was requested by the receiving handler and by the diverting handler under the other order, but not in excess of the pounds of skim milk remaining in Class II milk;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro-

rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (3) (v) or (4) (iii) of this paragraph pursuant to the following procedure:

11. Section 1103.61 is revised to read as follows:

§ 1103.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as the operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1103.11(a) which also meets the pooling requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month as route dispositions in such other Federal order marketing area than is disposed of as route dispositions in this marketing area; except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A plant meeting the requirements of § 1103.11(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month as route dispositions in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other Federal order; and

(c) A plant meeting the requirements of § 1103.11(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part except during the months of February through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1103.30 and 1103.31) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1103.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1103.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1103.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1103.70(e) and a credit in

the amount specified in § 1103.97(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk route dispositions in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1103.96 is revised to read as follows:

§ 1103.96 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all applicable payments made by handlers pursuant to §§ 1103.61, 1103.62, 1103.93 (a), and 1103.97, and out of which he shall make all applicable payments pursuant to §§ 1103.93(b) and 1103.98: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

14. In § 1103.100, paragraphs (a) and (d) are revised to read as follows:

§ 1103.100 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;
 (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of such producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an under payment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

1. In § 1104.7, paragraph (c) is revised as follows:

§ 1104.7 Distributing plant.

(c) from which Class I milk, except filled milk, is disposed of during the month on routes in the marketing area in an amount greater than an average of 600 pounds per day.

2. Section 1104.8 is revised as follows:

§ 1104.8 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant from which fluid milk products, except filled milk, equal to not less than 50 percent of its receipts of milk from dairy farmers, who would be producers if this plant qualified as a pool plant, are shipped to a distributing plant during such month: *Provided*, That any plant which qualifies as a supply plant for each of the months of September through December shall, upon written application to the market administrator before January 31 of the following year, be designated as a supply plant for the months of January through August.

3. Section 1104.10 is revised as follows:

§ 1104.10 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which fluid milk products are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1104.9 and which is not an other order plant nor a producer-handler plant.

4. Section 1104.13 is revised as follows:

§ 1104.13 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which the disposition of Class I milk on routes in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

5. Section 1104.15 is revised as follows:

§ 1104.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream or any mixture in fluid form of cream and milk or skim milk (except cultured sour cream, frozen storage cream, aerated cream products, ice cream and frozen dessert mix, evaporated or condensed milk, and sterilized products in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. Section 1104.17 is revised as follows:

§ 1104.17 Route disposition.

"Route disposition" or "disposed of on routes" means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a milk or filled milk plant.

7. A new § 1104.18 is added as follows:

§ 1104.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1104.30, paragraphs (a) (5) and (c) are revised as follows:

§ 1104.30 Reports of receipts and utilization.

(a)

(5) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler specified in § 1104.11

(b) who operates a partially regulated

distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes with such in-area sales of reconstituted skim milk in fluid milk products shown separately.

9. Section 1104.33 is revised as follows:

§ 1104.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products (including filled milk) on hand at the beginning and end of each month.

10. In § 1104.44 paragraph (e) (5) is revised as follows:

§ 1104.44 Transfers.

(e)

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1104.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised as follows:

§ 1104.46 Allocation of skim milk and butterfat classified.

(a)

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (ii) of this paragraph;

12. Section 1104.61 is revised as follows:

§ 1104.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e).

(a) A distributing plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall be excluded (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions.

(b) A distributing plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk was disposed of during the month on routes in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A supply plant meeting the requirements of § 1104.9 which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b) or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator

for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of the receipts of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1104.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1104.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1104.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1104.70(e) and a credit in the amount specified in § 1104.82(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

14. Section 1104.81 is revised as follows:

§ 1104.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1104.61, 1104.62, 1104.82, and 1104.84, and out of which he shall make all payments to handlers pursuant to §§ 1104.83 and 1104.84: *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

15. In § 1104.87, paragraphs (a) and (d) are revised as follows:

§ 1104.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund of such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

1. In § 1106.9, paragraphs (a) and (b) are revised to read as follows:

§ 1106.9 Pool plant.

(a) A distributing plant (other than that of a producer-handler or one which is exempt pursuant to § 1106.61) from which the following percentages of the receipts described in § 1106.7(c) are disposed of during the month as follows:

(1) 50 percent as Class I milk in the form of fluid milk products, except filled milk, and

(2) 5 percent as fluid milk products, except filled milk, on routes in the marketing area.

(b) A supply plant from which an amount equal to 50 percent of the receipts described in § 1106.8 is shipped during the month as fluid milk products, except filled milk, to a plant described in paragraph (a) of this section. Any supply plant that qualifies as a pool plant during each of the months of September through December shall be a pool plant for the following months of January through August except that, if the operator of such plant so requests the market administrator in writing, its pool plant status shall be terminated the first day of the month following receipt of such notification.

2. Section 1106.10 is revised as follows:

§ 1106.10 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in an order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are distributed on routes in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.9.

3. Section 1106.15 is revised as follows:

§ 1106.15 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.7(a) from which Class I milk is disposed of on routes in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own

production and fluid milk products received from pool plants.

4. Section 1106.16 is revised as follows:

§ 1106.16 Route.

"Route" means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products other than a delivery in bulk to a milk or filled milk plant.

5. Section 1106.17 is revised as follows:

§ 1106.17 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (except cream stored and frozen), cultured sour cream, and any mixture in fluid form of cream and milk or skim milk (except bulk ice cream mix). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1106.19 is added as follows:

§ 1106.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. Section 1106.30 is revised as follows:

§ 1106.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler, shall report to the market administrator for each accounting period in the month in detail on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers.

(b) The quantities of skim milk and butterfat contained in (or used in the production of) receipts of fluid milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk (except Class II products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(e) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(f) The quantities of skim milk and butterfat contained in opening and closing inventories of fluid milk products separately in bulk and in packaged form; and

(g) Each handler specified in § 1106.11(b) who operates a partially regulated distributing plant shall report as required in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk; such

report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of in the marketing area as Class I milk on routes with such in-area sales of reconstituted skim milk in fluid milk products shown separately; and

(h) Such other information with respect to receipts and utilization as the market administrator may prescribe.

8. Section 1106.33 is revised as follows:

§ 1106.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to: (a) The receipts and utilization of all receipts of producer milk and other source milk; (b) the weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products (including filled milk) handled; (c) payments to producers and cooperative association; and (d) the pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products (including filled milk) on hand at the beginning and end of each accounting period.

9. In § 1106.44, paragraph (e) (5) is revised as follows:

§ 1106.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1106.46, paragraph (a) is revised as follows:

§ 1106.46 Allocation of skim milk and butterfat classified.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1106.41 (b) (5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining of 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(2-a) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the accounting period;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the accounting period;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3) (iv) or (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess

in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (v) or (4) (ii) of this paragraph;

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1106.22(1) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers according to the classification assigned pursuant to § 1106.44(a);

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

11. Section 1106.61 is revised as follows:

§ 1106.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A distributing plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) Class I disposition made under limited term contracts to governmental bases and institutions.

(b) A distributing plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in this marketing area than was so disposed of in such other Federal

order marketing area but which plant is nevertheless, fully regulated under such other Federal order;

(c) A supply plant meeting the requirements of § 1106.9 which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of the receipts of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plants on routes in marketing areas regulated by two or more market pool orders the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1106.62 paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1106.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1106.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so com-

puted a charge in the amount specified in § 1106.70(e) and a credit in the amount specified in § 1106.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order is used pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1106.63 is revised as follows:

§ 1106.63 Governmental agencies.

A plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk distributed in the marketing area, shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such agencies shall be treated on the same basis as though received from a producer-handler. Fluid milk products (including diverted milk) disposed of by a handler to such agencies shall be classified as Class I milk.

In § 1071.51, paragraph (b) is revised to read as follows:

14. Section 1106.83 is revised as follows:

§ 1106.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.61, 1106.62, 1106.84 and 1106.86, and out of which he shall make all payments to handlers pursuant to §§ 1106.85 and 1106.86, inclusive.

15. In § 1106.89, paragraphs (a) and (d) are revised as follows:

§ 1106.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off) by the market administrator was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.7 is revised to read as follows:

§ 1108.7 Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

2. Section 1108.8 is revised to read as follows:

§ 1108.8 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than

50 percent of its receipts of producer milk, milk from a cooperative association in its capacity as a handler pursuant to § 1108.12(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

3. In § 1108.9, paragraph (a) is revised to read as follows:

§ 1108.9 Supply plant.

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a cooperative association in its capacity as a handler pursuant to § 1108.12(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

4. Section 1108.11 is revised to read as follows:

§ 1108.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a pool plant qualified pursuant to § 1108.10 and which is not an other order plant nor a producer-handler plant.

5. A new paragraph (d) is added to § 1108.12 to read as follows:

§ 1108.12 Handler.

(d) Any person who operates a partially regulated distributing plant.

6. Section 1108.16 is revised to read as follows:

§ 1108.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, yogurt, cream, or any mixture in fluid form of milk, skim milk and cream except frozen cream, aerated cream, ice cream mix, eggnog and sterilized products in hermetically sealed containers. Sour cream mixtures to which cheese or any food substance other than a milk product has been added shall be considered as a fluid milk product only if disposed of under a Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1108.21 is added to read as follows:

§ 1108.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1108.30, paragraphs (b) and (c) are revised to read as follows:

§ 1108.30 Reports of sources and utilization.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk outside the marketing area, in-area and outside area route disposition of filled milk, and inventories of fluid milk products on hand at the end of the month.

(c) Each handler who operates a partially regulated distributing plant shall report as required in this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk.

Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk.

9. In § 1108.44, subparagraph (5) of paragraph (g) is revised to read as follows:

§ 1108.44 Transfers.

(g)

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1108.46, subparagraph (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised to read as follows:

§ 1108.46 Allocation of skim milk and butterfat classified.

* * * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, from cooperative associations as handlers pursuant to § 1108.12(c), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim

milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph:

11. Section 1108.61 is revised to read as follows:

§ 1108.61 Plants subject to other Federal orders.

A plant specified in paragraphs (a) or (b) of this section shall be a nonpool plant for purposes of this part except as specified in paragraphs (c) and (d).

(a) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, was disposed of from such plant during the six months period immediately preceding to retail or wholesale outlets (except pool plants or non-pool plants) in the Central Arkansas marketing area regulated pursuant to such other order.

(b) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

(c) The operator of a plant specified in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this

area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1108.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1108.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1108.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1108.70(e) and a credit in the amount specified in § 1108.82(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1108.81 is revised to read as follows:

§ 1108.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund

known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1108.61, 1108.62, 1108.82, and 1108.84, and out of which he shall make all payments pursuant to §§ 1108.83 and 1108.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

14. In § 1108.87, paragraph (a) is revised to read as follows:

§ 1108.87 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

1. Section 1120.7 is revised as follows:

§ 1120.7 Fluid milk product.

"Fluid milk product" means all the skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, concentrated milk, fortified milk or skim milk, flavored milk drinks, filled milk, cream except aerated cream products, cultured sour cream and sour cream products labeled Grade A, and any mixture of cream and milk in fluid form except ice cream and other frozen dessert mixes, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

2. Section 1120.9 is revised as follows:

§ 1120.9 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged:

Provided, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

3. Section 1120.12 is revised as follows:

§ 1120.12 Pool plant.

"Pool plant" means:

(a) A distributing plant, other than the plant of a producer-handler, from which a volume of Class I milk, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a cooperative association(s) in its capacity as a handler pursuant to § 1120.17(c) (2) is disposed of during the month on routes unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1500 pounds on a daily average: *Provided*, That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph;

(b) A supply plant from which a volume of fluid milk products, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a cooperative association(s) in its capacity as a handler pursuant to § 1120.17(a) (2) is transferred during the month to a distributing plant from which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants is disposed of on routes during the month and the volume so disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1500 pounds, whichever is less: *Provided*, That if a portion of such supply plant, physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

4. Section 1120.13 is revised as follows:

§ 1120.13 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means any nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

5. Section 1120.18 is revised as follows:

§ 1120.18 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

6. A new § 1120.19 is added as follows:

§ 1120.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. Section 1120.30 is revised as follows:

REPORTS, RECORDS AND FACILITIES

§ 1120.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each cooperative association in its capacity as a handler pursuant to § 1120.17(c) (1) and (2) and each handler with respect to each of his pool plants shall report to the market administrator for such month and for each accounting period in such month elected pursuant to § 1120.34, in the detail and on forms prescribed by the market administrator, as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own farm production);

(ii) Receipts of fluid milk products from other pool plants and from cooperative associations;

(iii) Receipts of other source milk; and

(iv) Inventories of fluid milk products on hand at the beginning and at the end of such month;

(2) The utilization of all skim milk and butterfat required to be reported by this part, including a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler specified in § 1120.17 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk with such in-area disposition of reconstituted skim milk in fluid milk products shown separately; and

(c) Each handler operating a nonpool supply plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

8. Section 1120.34 is revised as follows:

§ 1120.34 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

9. In § 1120.44, paragraph (e) (5) is revised as follows:

§ 1120.44 Transfers.

(e) * * *
(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1120.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i) of paragraph (a) are revised as follows:

§ 1120.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1120.17(c), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool

plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3)(iv), (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (3)(v) or (4)(iii) of this paragraph pursuant to the following procedure:

11. Section 1120.61 is revised as follows:

§ 1120.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A plant meeting the requirements of § 1120.12(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third

consecutive month in which a greater proportion of its Class I route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this paragraph it is regulated under such other order;

(b) A plant meeting the requirements of § 1120.12(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is disposed of in such other marketing area but which plant is fully regulated under such other Federal order.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of the receipts of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

12. In § 1120.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1120.62 Obligations of handler operating a partially regulated distributing plant.

(1) (i) The obligation that would have been computed pursuant to § 1120.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective

order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1120.70(e) and a credit in the amount specified in § 1120.82 (b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

13. Section 1120.63 is revised as follows:

§ 1120.63 State institutions.

A State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such institutions shall be treated on the same basis as though received from a producer-handler. Fluid milk products disposed of by a handler to such institutions shall be classified on the same basis as though disposed of to a producer-handler.

14. Section 1120.81 is revised as follows:

§ 1120.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" in which he shall deposit all payments made by handlers pursuant to §§ 1120.61, 1120.62, 1120.82, and 1120.84, subject to the provisions of § 1120.87, and out of which he shall make all pay-

ments pursuant to §§ 1120.83 and 1120.84; *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

15. In § 1120.88, paragraphs (a) and (b) are revised as follows:

§ 1120.88 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the last day of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the last day of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1121—MILK IN THE SOUTH TEXAS MARKETING AREA

1. Part 1121.7 is revised to read as follows:

§ 1121.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid

milk products in transit on routes shall not be a plant under this definition.

2. Section 1121.9 is revised to read as follows:

§ 1121.9 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which fluid milk products are moved to a distributing plant.

3. In § 1121.10, paragraphs (a) and (b) are revised to read as follows:

§ 1121.10 Pool plant.

"Pool plant" means:

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, on routes within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant;

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1121.12(d) at such plant is moved as fluid milk products, except filled milk, in bulk to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant; or

4. In § 1121.11, the introductory text and paragraphs (c) and (d) are revised to read as follows:

§ 1121.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (other than to pool plants) in the marketing area during the month.

5. Section 1121.15 is revised to read as follows:

§ 1121.15 Producer-handler.

"Producer-handler" means any person who:

- (a) Produces milk and operates a distributing plant;
- (b) Receives no milk from other dairy farmers;
- (c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk;
- (d) Receives from pool plants not more than a total of 5,000 pounds of fluid milk products during the month or 5 percent of his Class I disposition, whichever is less; and
- (e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

6. Section 1121.16 is revised to read as follows:

§ 1121.16 Fluid milk products.

"Fluid milk products" mean milk, skim milk, buttermilk, filled milk, flavored milk, flavored milk drinks; sweet cream, cultured sour cream and sour cream products labeled Grade A; any mixture in fluid form of milk or skim milk and cream; concentrated milk or skim milk. Eggnog, frozen dessert mixes, yogurt, aerated cream products, evaporated milk, condensed milk or skim milk and sterilized products in hermetically sealed metal or glass containers shall not be fluid milk products pursuant to this section. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. Section 1121.18 is revised to read as follows:

§ 1121.18 Route disposition.

"Route disposition", or "disposed of on routes", means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products, other than a delivery to a plant.

8. A new § 1121.19a is added to read as follows:

§ 1121.19a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

9. In § 1121.22, paragraph (g) is revised to read as follows:

§ 1121.22 Duties.

- (g) Verify all reports and payments of each handler by audit of such han-

dler's records and the records of any other handler or person upon whose disposition such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

10. In § 1121.30, paragraphs (a) (3) and (c) are revised to read as follows:

§ 1121.30 Reports of receipts and utilization.

(3) The utilization or disposition of all quantities required to be reported, showing separately:

- (i) Total route disposition, except filled milk;
- (ii) Route disposition in the marketing area showing filled milk disposition separately;
- (iii) Transfers to other pool plants;
- (iv) Transfers to other order plants;
- (v) Transfers to nonpool plants; and
- (vi) Diversion to nonpool plants.

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk.

11. In § 1121.32, paragraph (b) is revised to read as follows:

§ 1121.32 Other reports.

(b) Each handler operating an other order plant with route disposition in the marketing area shall report such disposition (showing filled milk disposition separately) to the market administrator on or before the seventh day after the end of the month.

12. In § 1121.33, paragraph (b) is revised to read as follows:

§ 1121.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

13. In § 1121.46, paragraph (a) (2), (4), (5), (8), and (9) is revised to read as follows:

§ 1121.46 Allocation of skim milk and butterfat classified.

- (2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class in series beginning with Class II milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order or from a plant exempt pursuant to § 1121.62;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II milk but not in excess of such quantity:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(a) For which the handler requests Class II milk utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in bulk from an other order plant in excess of similar transfers to such plant, if Class II milk utilization was requested by the operator of such plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (4) (iv) or (5) (i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk

from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (4) (v) or (5) (ii) of this paragraph:

(i) In series beginning with Class II milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II milk utilization of skim milk announced for the month by the market administrator pursuant to § 1121.22(c) or the percentage that Class II milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I milk, the remaining pounds of such receipts;

14. Section 1121.60 is revised to read as follows:

§ 1121.60 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e) of this section.

(a) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1121.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for

the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

15. In § 1121.61, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1121.61 Obligation of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1121.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfer from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1121.70(e) and a credit computed at the uniform price with respect to receipts, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its

value at the uniform price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

16. Section 1121.62 is revised to read as follows:

§ 1121.62 Governmental agencies.

A plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk distributed in the marketing area, shall be exempt from all provisions of this part. Fluid milk products received at a pool plant from such agencies shall be treated on the same basis as though received from a producer-handler. Fluid milk products disposed of by a handler to such agencies shall be classified on the same basis as though disposed of to a producer-handler.

17. Section 1121.83 is revised to read as follows:

§ 1121.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 1121.60, 1121.61, 1121.84, and 1121.86, and out of which he shall make all payments to handlers pursuant to §§ 1121.85 and 1121.86.

18. In § 1121.89, paragraphs (a) and (d) are revised to read as follows:

§ 1121.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the

calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1125—MILK IN THE PUGET SOUND, WASH., MARKETING AREA

1. The text of § 1125.7 which precedes paragraph (a) is revised to read as follows:

§ 1125.7 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk and milk products (including filled milk). The term "plant" does not include:

2. In § 1125.8, paragraphs (a) and (b) are revised to read as follows:

§ 1125.8 Pool plant.

(a) Any such plant, hereinafter referred to as a "pool distributing plant", from which during the month route disposition of fluid milk products, except route disposition of filled milk, in the marketing area averages more than 110 pounds daily and is also 10 percent or more of receipts of Grade A milk at such plant; or

(b) Any other such plant, hereinafter referred to as a "pool supply plant", at which milk, except filled milk, so qualified is received from dairy farmers or a cooperative association pursuant to § 1125.10(f), and which is:

(1) Located in the marketing area; or
(2) Located outside the marketing area, and from which is moved in the form of fluid milk products, except filled milk, to a pool distributing plant at least the following applicable percentage of both the skim milk and butterfat in Grade A milk received from dairy farmers:

(i) During the months of October through December, 50 percent of such receipts during the month; or

(ii) During the months of January through September, 20 percent of such receipts during the month, except that any plant which shipped in the form of fluid milk products, except filled milk, more than 50 percent of such receipts during the entire period of October through December immediately preceding shall be a pool plant for each of the months of January through September.

(3) Any plant which otherwise meets the requirements of this paragraph may withdraw from pool supply plant status for any month in the January-September period if the operator of the plant files with the market administrator,

prior to the first day of such month, a written request for such withdrawal.

3. Section 1125.9 is revised to read as follows:

§ 1125.9 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 110 pounds daily of fluid milk products is disposed of on routes in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

4. Section 1125.12 is revised to read as follows:

§ 1125.12 Producer milk.

"Producer milk" or "milk received from producers" means skim milk and butterfat in milk produced by producers which is received for the account of a handler as follows:

(a) With respect to receipts at a pool plant, producer milk shall include:

(1) Milk received at such plant directly from producers;

(2) Milk (not including filled milk) diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the condition set forth in paragraph (c) of this section; and

(3) Milk received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1125.10(f), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to milk for which a cooperative association is a handler in a capacity other than as the operator of a pool plant, producer milk shall include:

(1) Milk (not including filled milk) diverted from the pool plant of another handler to a nonpool plant for the account of the cooperative association, subject to the condition set forth in paragraph (c) of this section; and

(2) Milk for which the cooperative association is a handler pursuant to § 1125.10(f) to the following extent:

(i) For purposes of reporting pursuant to §§ 1125.30(c) and 1125.31(a) and making payments to producers pursuant to § 1125.80(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) For purposes of location adjustments pursuant to §§ 1125.53 and 1125.81,

milk diverted to a nonpool plant shall be priced at the location of the plant to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently received in part at two or more plants, the proportion of the load received at each such plant shall be prorated among the individual producers on the basis of their percentage of the total load.

5. In § 1125.14, paragraphs (a)(2) and (d) are revised to read as follows:

§ 1125.14 Producer-handler.

(a) *

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) nonfluid milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) his designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been cancelled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for milk or filled milk received from any producer-handler.

6. Section 1125.15 is revised to read as follows:

§ 1125.15 Fluid milk product.

"Fluid milk product" means the following, in fluid or frozen form:

(a) Milk, skim milk, skim milk drinks, buttermilk, filled milk, flavored milk, and flavored milk drinks (including such products reconstituted or fortified with additional nonfat milk solids);

(b) Concentrated milk, skim milk, flavored milk, and flavored milk drinks; and

(c) Cream (sweet or sour) and any mixtures of cream and milk or skim milk (exclusive of ice cream and frozen dessert mixes, cocoa mixes, aerated cream products, and eggnog).

Fluid milk products shall not include those products commonly known as evaporated milk, condensed milk, and skim milk (plain or sweetened), yogurt, starter, any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers; or a product which contains 6 percent or more nonmilk fat (or oil).

7. A new § 1125.15a is added to read as follows:

§ 1125.15a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1125.30, paragraphs (a) (2) and (d) are revised to read as follows:

§ 1125.30 Monthly reports of receipts and utilization.

(a) * * *

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities:

(i) contained in fluid milk products on hand at the beginning and end of the month,

(ii) in route disposition outside the marketing area, and

(iii) in route disposition of filled milk in the marketing area and outside the marketing area;

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a) (1), (2), and (4) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. Section 1125.32 is revised to read as follows:

§ 1125.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under § 1125.30 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by him.

9a. In § 1125.41, subparagraph (1) of paragraph (b) is revised to read as follows:

§ 1125.41 Classes of utilization.

(b) * * *

(1) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, starter or any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers;

§ 1125.41 Classes of utilization.

(b) * * *

(1) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, starter or any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers;

10. In § 1125.43, paragraph (b) is revised to read as follows:

§ 1125.43 Responsibility of handlers and reclassification of milk.

(b) The burden shall rest upon each handler to establish the sources of milk and milk products (including filled milk) required to be reported by him pursuant to § 1125.30.

11. In § 1125.44, paragraph (a) (4) is revised to read as follows:

§ 1125.44 Interplant movements.

(a) * * *

(4) Notwithstanding the prior provisions of this paragraph, any such skim milk and butterfat transferred in bulk from a pool plant to a pool distributing plant in which facilities are maintained and used to receive milk or milk products (including filled milk) required by applicable health authority regulations to be kept physically separate from Grade A milk shall be classified in accordance with the provisions of paragraph (b) of this section; and

12. In § 1125.45, paragraph (a) is revised to read as follows:

§ 1125.45 Computation of skim milk and butterfat in each class.

(a) If any other source milk not subject to allocation at such plant pursuant to § 1125.46(a) (2) through (4) was received at any pool plant of a handler, there will be computed for such handler the total pounds of skim milk and butterfat, respectively, in each class at all of his pool plants combined, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1125.46 and computation of obligation pursuant to § 1125.70 shall be based upon the combined utilization so computed. For purposes of assigning location adjustments pursuant to §§ 1125.53 with respect to milk or filled milk moved between such plants, the skim milk and butterfat subtracted from each class pursuant to § 1125.46(a) (2), (3), (4), (6), and (7) and the corresponding steps of § 1125.46 (b) will be assigned so far as possible to utilization (exclusive of such interplant movements) reported at the plant at which it was received, and thereafter in sequence to plants at which location adjustment for such class is the same or most nearly similar, and the applicable location adjustments will be determined on the basis of the classification resulting from the application of § 1125.44 (a) and (b) to the remaining utilization reported;

13. Section 1125.46 is revised to read as follows:

§ 1125.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1125.45, the market administrator shall determine the classification

of producer milk for each handler at all his pool plants (or at each pool plant, when § 1125.45(b) applies) as follows:

(a) Skim milk shall be allocated in the following manner, except that the quantities allocated to Class II milk and Class III milk shall be subtracted in series beginning with Class III.

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1125.41(c) (5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below, from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products not qualified for disposition to consumers in fluid form, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(vi) Subtract, if the total pounds of skim milk in all classes pursuant to § 1125.45 exceed the total pounds of skim milk reported pursuant to § 1125.30(a) (1), from the remaining pounds of skim milk in each class, in series beginning with Class III, the amount determined by prorating such excess between the pounds of skim milk subtracted pursuant to subdivisions (i) through (v) of this subparagraph and the remaining receipts;

(4) Subtract, in the order specified below in sequence beginning with Class III, from the pounds of skim milk remaining in Class II and Class III but not in excess of such quantity:

(i) Receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II or III utilization;

(ii) Remaining receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, which are in excess of the pounds of

skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, receipts from pool plants of other handlers (and of the same handler, when § 1125.45(b) applies), and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(iii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II or III utilization was requested by the operator of such plant and the handler;

(5) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) and (ii) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (3) (v) or (4) (iii) of this paragraph;

(i) In series, beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1125.22(m) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers (and of the same handler, when § 1125.45(b) applies) according to the classification assigned pursuant to § 1125.44;

(9) If the pounds of skim milk remaining in all three classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section and § 1125.45(c) into one total for

each class and determine the weighted average butterfat content of producer milk in each class.

14. Section 1125.66 is revised to read as follows:

§ 1125.66 Plants subject to other Federal orders.

Except for §§ 1125.30(e), 1125.32 through 1125.34, and paragraph (c) of this section, the provisions of this part shall not apply to a handler with respect to the operation of plants described as follows:

(a) A distributing plant from which a lesser volume of fluid milk products, except filled milk, is disposed of as route disposition in the Puget Sound marketing area than as route disposition in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order;

(b) Any supply plant for any portion of the period of January through September, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

(c) Each handler operating a plant specified in paragraph (a). If such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

15. In § 1125.67, subdivision (i) of paragraph (a) (1), and paragraph (b) are revised to read as follows:

§ 1125.67 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1125.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant

or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1125.70(e) and a credit in the amount specified in § 1125.84(b) (3) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes within the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

16. In § 1125.81, paragraph (c) is revised to read as follows:

§ 1125.81 Location adjustments to producers and on nonpool milk.

(c) For purposes of computations pursuant to §§ 1125.84 and 1125.85 the weighted average price for all milk shall be adjusted at the rates set forth in § 1125.53 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received.

17. Section 1125.83 is revised to read as follows:

§ 1125.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1125.66, 1125.67, and 1125.84 and out of which he shall make all payments to handlers pursuant to § 1125.85.

18. Section 1125.84 is revised to read as follows:

§ 1125.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month during which the skim milk and butterfat were received, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the total amount specified in paragraph (b) of this section:

(a) The sum of:

(1) The net pool obligations computed pursuant to § 1125.70 for such handler; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1125.80(d);

(b) The sum of:

(1) The value of milk received by such handler from producers at the applicable uniform prices specified in § 1125.80 (a);

(2) The amount to be paid to cooperative associations pursuant to § 1125.80 (d); and

(3) The value at the weighted average price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) adjusted for butterfat content by the producer butterfat differential, with respect to other source milk for which a value is computed pursuant to § 1125.70 (e).

19. Section 1125.85 is revised to read as follows:

§ 1125.85 Payments out of the producer-settlement fund.

On or before the 17th day after the end of each month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1125.84(b) exceeds the amount computed pursuant to § 1125.84(a), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1125.84, 1125.86, 1125.87, and 1125.88: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

20. In § 1125.89, paragraphs (a) and (d) are revised to read as follows:

§ 1125.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice

shall be complete upon mailing to the handler's last-known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

1. Section 1126.7 is revised as follows:

§ 1126.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1126.10 paragraph (a) is revised as follows:

§ 1126.10 Pool plant.

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, on routes within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of subparagraph (1) of this paragraph and total

disposition of fluid milk products, except filled milk, on routes of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph;

3. Section 1126.11 is revised as follows:

§ 1126.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (other than to pool plants) in the marketing area during the month.

4. Section 1126.15 is revised as follows:

§ 1126.15 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream (except sterilized cream and sterilized cream products disposed of in hermetically sealed metal or glass containers and cultured sour cream), and any mixture (except egg nog and bulk ice cream and frozen dairy product mixes) of cream and milk or skim milk. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. Section 1126.18 is revised as follows:

§ 1126.18 Reserve supply credit.

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated as follows: From the total hundredweight of milk classified as Class I milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plant(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the 7th day after the end of the month.

6. Section 1126.19 is revised as follows:

§ 1126.19 Route.

"Route" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product other than a delivery in bulk form to a milk processing plant.

7. A new § 1126.20 is added as follows:

§ 1126.20 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

8. In § 1126.30, paragraphs (f) and (h) are revised as follows:

§ 1126.30 Reports of receipts and utilization.

(f) The disposition of fluid milk products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

(h) Each handler operating a partially regulated distributing plant shall report as required in this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk.

9. In § 1126.33, paragraph (b) is revised as follows:

§ 1126.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

10. In § 1126.41, paragraph (a) (1) is revised as follows:

§ 1126.41 Classes of utilization.

(a) * * *

(1) Disposed of in the form of a fluid milk product; *Provided*, That when any fluid milk product is modified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content;

(7) That portion of modified products excluded from a Class I skim milk classification pursuant to paragraph (a) of this section.

11. In § 1126.44, paragraph (g) (5) is revised as follows:

§ 1126.44 Transfers.

(g) * * *

(5) For purposes of this paragraph, if the order to which the skim milk and butterfat is transferred or diverted provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

12. In § 1126.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised as follows:

§ 1126.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph,

which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk in receipts from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1126.12 (c) and (d) and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(c) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3) (iv), or (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(g) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(v), or (4)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1126.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

13. Section 1126.61 is revised as follows:

§ 1126.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third

consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1126.10(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of the receipts of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

14. In § 1126.62, paragraphs (a)(1), (i) and (b) are revised as follows:

§ 1126.62 Obligation of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1126.70 at such plant shall be determined as though such plant were a pool

plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1126.70(e) and a credit in the amount specified in § 1126.93(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

15. Section 1126.92 is revised as follows:

§ 1126.92 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1126.61, 1126.62, 1126.93, and 1126.95, and out of which he shall make all payments to handlers pursuant to §§ 1126.94 and 1126.95.

16. In § 1126.98, paragraphs (a) and (d) are revised as follows:

§ 1126.98 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the

terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8(c) (15) (A) of the Act, a petition claiming such money.

PART 1127—MILK IN SAN ANTONIO, TEX., MARKETING AREA

1. In § 1127.8, paragraph (a) is revised to read as follows:

§ 1127.8 Pool plant.

(a) A distributing plant (other than one exempt pursuant to § 1127.60) which disposes of as Class I milk, except filled milk, on routes in the marketing area 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.11;

2. Section 1127.9 is revised to read as follows:

§ 1127.9 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

3. Section 1127.14 is revised to read as follows:

§ 1127.14 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream or any mixture of cream and milk or skim milk (except eggnog, cultured sour cream, frozen storage cream and bulk ice cream and frozen dairy product mixes). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

4. A new § 1127.16 is added to read as follows:

§ 1127.16 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1127.30, paragraph (e) is revised to read as follows:

§ 1127.30 Reports of receipts and utilization.

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

6. Section 1127.32 is revised to read as follows:

§ 1127.32 Other reports.

Each handler who operates a partially regulated distributing plant shall report pursuant to § 1127.30 and pursuant to § 1127.31 in the event that such handler does not elect at the regular time of reporting pursuant to § 1127.30 to pay amounts computed pursuant to § 1127.61(b), except that receipts of Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers; such report shall include a separate statement showing

the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

7. In § 1127.33, paragraphs (b) and (d) are revised to read as follows:

§ 1127.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products (including filled milk) on hand at the beginning and end of each month.

8. In § 1127.44, subparagraph (5) of paragraph (c) is revised to read as follows:

§ 1127.44 Transfers.

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II or Class II-A (if identical classification is provided under the other order); and

9. In § 1127.46, subparagraphs (3), (4), (5), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1127.46 Allocation of skim milk and butterfat classified.

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with the lowest priced class, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II-A and Class II (beginning with Class II-A), but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph;

(a) For which the handler requests such utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants, receipts from a cooperative association in its capacity as a handler pursuant to § 1127.10(d) and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (v) or (5) (ii) of this paragraph;

10. Section 1127.60 is revised to read as follows:

§ 1127.60 Handlers subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except as specified in paragraphs (c) and (d):

(a) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on

routes in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is fully regulated under such other order.

(b) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area, but which plant is fully regulated under such other Federal order.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1127.30 and 1127.31) and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), or (b) of this section if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1127.61, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1127.61 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1127.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or

an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class II-A milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1127.70(d) and a credit in the amount specified in § 1127.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. In § 1127.89, paragraphs (a) and (d) are revised to read as follows:

§ 1127.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The delivery period during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the agreement (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

1. In § 1128.7, paragraphs (a) (1) and (b) are revised to read as follows:

§ 1128.7 Approved plant.

(a)

(1) From which Class I milk labeled Grade A other than filled milk, in consumer packages is disposed of in the marketing area on routes, or

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which Class I milk labeled Grade A other than filled milk in consumer packages is disposed of in the marketing area on a route operated wholly or partially in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

2. Section 1128.8 is revised to read as follows:

§ 1128.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing or processing plant other than an approved plant. The following categories of unapproved plant are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means an unapproved plant that

is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means an unapproved plant from which fluid milk products are moved to an approved plant during the month but which is neither an other order plant nor a producer-handler plant.

3. Section 1128.13 is revised to read as follows:

§ 1128.13 Producer-handler.

"Producer-handler" means any person:

(a) who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which fluid milk products labeled Grade A in consumer-type packages are disposed of in the marketing area on routes; and

(b) whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from approved plants.

4. Section 1128.14 is revised to read as follows:

§ 1128.14 Route.

"Route" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product other than in bulk to a milk or filled milk processing plant.

5. Section 1128.15 is revised to read as follows:

§ 1128.15 Fluid milk product.

"Fluid milk product" means all the skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, sour cream and sour cream products under a Grade A label, and any mixture (except eggnog, aerated cream products and mixes for ice cream or other frozen dairy products) of cream and milk or skim milk; *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1128.16 is added to read as follows:

§ 1128.16 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1128.30, paragraph (g) is revised to read as follows:

§ 1128.30 Reports of receipts and utilization.

(g) The disposition of Class I products on routes wholly outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk; and

8. In § 1128.32, paragraph (b) is revised to read as follows:

§ 1128.32 Other reports.

(b) Each handler who operates a partially regulated distributing plant shall report pursuant to § 1128.30 and pursuant to § 1128.31 in the event that such handler does not elect at the regular time of reporting pursuant to § 1128.30 to pay amounts computed pursuant to § 1128.62(b), except that receipts in Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers; such report shall include a separate statement showing Class I disposition on routes in the marketing area of each of the following: skim milk and butterfat, respectively in fluid milk products and the quantity thereof which is reconstituted skim milk.

9. In § 1128.33, paragraphs (b) and (d) are revised to read as follows:

§ 1128.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products (including filled milk) handled;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products (including filled milk) on hand at the beginning and end of each month.

10. In § 1128.44, subparagraph (5) of paragraph (f) is revised to read as follows:

§ 1128.44 Transfers.

(f)

(5) For purposes of this paragraph (f), if the transferee order provides for more than two classes of utilization skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II unless the other order provides a Class II-A classification identical to that provided in this order; and

11. In § 1128.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1) of paragraph (a) are revised to read as follows:

§ 1128.46 Allocation of skim milk and butterfat classified.

(a)

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with the lowest priced class, the pounds of skim milk in each of the following:

(i) Other source milk in the form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II-A and Class II (beginning with Class II-A):

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in such classes, respectively;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between approved plants of the handler) at all approved plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other approved plants and from a cooperative association in its capacity as a handler pursuant to § 1128.9(e), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at

this plant is of all such receipts remaining at all approved plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Such subtraction is to be made first from the remaining Class II-A at the pool plant where received, next from remaining Class II-A at other pool plant(s) of such handler. If the amount to be subtracted is greater than the remaining Class II-A at all pool plants of the handler, such additional amount is to be subtracted first from the remaining Class II at the pool plant where received, next from Class II at other pool plant(s) of such handler. In such case, the utilization of skim milk in Class II-A (then Class II) shall be increased and the utilization of skim milk in Class II (then Class I) shall be decreased in an amount equal to the quantity necessary to make such subtraction, and the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II-A and Class II milk,

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all approved plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the approved plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other approved plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other approved plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(v) or (4)(iii) of this paragraph pursuant to the following procedure:

12. Section 1128.61 is revised to read as follows:

§ 1128.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e) that:

(a) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order.

(b) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is fully regulated under such other Federal order.

(c) An approved plant pursuant to § 1128.7 (a) (2) which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or, (2) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

(d) Each handler operating a plant described in paragraph (a), (b), or (c) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the

reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1128.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1128.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1128.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class II-A milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1128.70(e) and a credit in the amount specified in § 1128.94(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to approved plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from approved plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location

of the nonpool plant less the value of such skim milk at the Class II price.

14. Section 1128.93 is revised to read as follows:

§ 1128.93 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1128.61, 1128.62, 1128.94, and 1128.96, and out of which he shall make all payments to handlers pursuant to §§ 1128.95 and 1128.96.

15. In § 1128.99, paragraphs (a) and (d) are revised to read as follows:

§ 1128.99 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8(c) (15) (A) of the act, a petition claiming such money.

PART 1129—MILK IN THE AUSTIN-WACO, TEX., MARKETING AREA

1. Section 1129.8 is revised as follows:

§ 1129.8 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which Class I milk, except filled milk,

equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants, is disposed of during the month on a route(s) operated partially or wholly in the marketing area.

2. Section 1129.11 is revised as follows:

§ 1129.11 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

3. The introductory text and paragraph (a) of § 1129.14 are revised as follows:

§ 1129.14 Route.

"Route" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products other than as follows:

- (a) Delivery in bulk to a plant, or

4. Section 1129.20 is revised as follows:

§ 1129.20 Fluid milk product.

"Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, cultured sour cream, any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream mix, or other frozen mixes, evaporated or condensed milk and any milk product contained in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for fortification the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of unmodified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1129.21 is added as follows:

§ 1129.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk

(whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1129.27, paragraph (g) is revised as follows:

§ 1129.27 Duties.

(g) Verify all reports and payments of each handler by audit of such handler's records and the records of any other handler or person upon whose disposition such handler claims classification of skim milk and butterfat and by such investigation as the market administrator deems necessary;

7. In § 1129.30, paragraph (e) is revised as follows:

§ 1129.30 Reports of receipts and utilization.

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk; and

8. In § 1129.33, paragraphs (b) and (c) are revised as follows:

§ 1129.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, and milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, and milk products (including filled milk) on hand at the beginning and end of each month; and

9. In § 1129.44, subparagraph (5) of paragraph (e) is revised as follows:

§ 1129.44 Transfers.

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

10. In § 1129.46, subparagraphs (2), (3), (4), and (7) of paragraph (a) are revised as follows:

§ 1129.46 Allocation of skim milk and butterfat classified.

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk prod-

ucts received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph;

(a) For which the handler requests Class I utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from fluid milk plants of other handlers, receipts from a cooperative association in its capacity as a handler pursuant to § 1129.13(b) (2) and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in each of the following:

(i) Receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (3) (iv) or (4) (i) of this paragraph;

(ii) Receipts of fluid milk products in bulk from other order plants that were not subtracted pursuant to subparagraph (3) (v) or (4) (ii) of this paragraph;

11. Section 1129.61 is revised as follows:

§ 1129.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than is disposed of on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area.

(b) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area than is disposed of on routes in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) An approved supply plant which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (2) retains automatic pooling status under another Federal order.

12. In § 1129.96, paragraphs (a) and (d) are revised as follows:

§ 1129.96 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;
 (2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15) (A) of the act, a petition claiming such money.

PART 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

1. Section 1130.7 is revised as follows:

§ 1130.7 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

2. In § 1130.10, paragraphs (a) and (b) are revised as follows:

§ 1130.10 Pool plant.

"Pool plant" means:

(a) Any distributing plant, except a producer-handler plant or an other order plant, from which during the month:

(1) The disposition of fluid milk products, except filled milk, within the marketing area on routes is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of the receipts of Grade A milk at such plant;

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1130.12(d) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant; or

3. Section 1130.11 is revised as follows:

§ 1130.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are disposed of on routes in the marketing area during the month.

4. Section 1130.15 is revised as follows:

§ 1130.15 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except:

(1) That represented by nonfat solids used in the fortification of fluid milk products; or

(2) Yogurt in packaged form and cream in prepackaged tetrapaks (one-half fluid ounce capacity) if such products are made from milk classified and priced under any Federal order;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

5. Section 1130.16 is revised as follows:

§ 1130.16 Fluid milk products.

"Fluid milk products" means all skim milk (including reconstituted skim milk) and butterfat disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, filled milk, cream, cultured sour cream and sour cream products labeled Grade A, and any mixture of cream and milk or skim milk (other than frozen cream, aerated cream products, eggnog, ice cream, ice cream mix or other frozen mixes, evaporated or condensed milk and milk products contained in hermetically sealed containers): *Provided*, That when nonfat milk solids are added for "fortification", the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1130.16a is added as follows:

§ 1130.16a Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. Section 1130.18 is revised as follows:

§ 1130.18 Route disposition.

"Route disposition", or "disposed of on routes", means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products other than a delivery to a milk or filled milk plant.

8. In § 1130.30, paragraphs (a) (3) and (c) are revised as follows:

§ 1130.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization or disposition of all quantities required to be reported, showing separately:

(i) Total route disposition, except filled milk;

(ii) Route disposition in the marketing area;

(iii) Transfers to other pool plants;

(iv) Transfers to other order plants;

(v) Transfers to nonpool plants;

(vi) Diversions to nonpool plants; and

(vii) In-area and outside area route disposition of filled milk.

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing Class I disposition on routes in the marketing area of

each of the following: skim milk and butterfat, respectively, in fluid milk products and the quantity thereof which is reconstituted skim milk.

9. In § 1130.33, paragraphs (b) and (c) are revised as follows:

§ 1130.33 Records and facilities.

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products (including filled milk) handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and milk products (including filled milk) on hand at the beginning and end of each month; and

10. In § 1130.44, paragraph (e) (5) is revised as follows:

§ 1130.33 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to another class shall be classified as Class III milk; and

11. Section 1130.46 is revised as follows:

§ 1130.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1130.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk classified as Class III milk pursuant to § 1130.41(c) (7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class in series beginning with Class III milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A

certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II or Class III milk but not in excess of such quantity:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph;

(a) For which the handler requests Class II or Class III milk utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers to such plant, if Class II or Class III milk utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (4) (iv) or (5) (i) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (v) or (5) (ii) of this paragraph:

(i) In series beginning with Class III milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated

Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1130.22(c) or the percentage that Class II and Class III milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I milk, the remaining pounds of such receipts;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1130.44(a); and

(11) If the pounds of skim milk remaining in each class exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section and § 1130.45(d) for each class and determine the weighted average butterfat content of producer milk in each class.

12. Section 1130.60 is revised as follows:

§ 1130.60 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1130.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1130.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1130.10(b) which also meets the

pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months January through August, if such plant retains automatic pooling status under this part.

(d) Each handler operating a plant described in paragraphs (a) or (b) of this section shall report pursuant to § 1130.32(b) and each handler operating a plant described in paragraph (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a) or (b) of this section, if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

13. In § 1130.61, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1130.61 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1) (i) The obligation that would have been computed pursuant to § 1130.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II (or Class III) milk if allocated to such classes at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1130.70(e) and a credit computed at the uniform price

with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class III price, whichever is higher and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

14. Section 1130.83 is revised as follows:

§ 1130.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 1130.60, 1130.61, 1130.84, and 1130.86, and out of which he shall make all payments to handlers pursuant to §§ 1130.85 and 1130.86.

15. In § 1130.89, paragraphs (a) and (d) are revised as follows:

§ 1130.89 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to

which the obligations exists, were received or handled; and

(3) If the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

1. Section 1132.10 is revised as follows:

§ 1132.10 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of

any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

2. Section 1132.11 is revised as follows:

§ 1132.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing-area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

3. Section 1132.12 is revised as follows:

§ 1132.12 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates a partially regulated distributing plant;

(c) Any cooperative association with respect to milk of producers which is diverted from a pool plant to a nonpool plant for the account of such association;

(d) Any cooperative association with respect to the milk of its member producers which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered; and

(e) A producer-handler, or any person who operates an other order plant described in § 1132.61.

4. Section 1132.13 is revised as follows:

§ 1132.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk

from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

5. Section 1132.15 is revised as follows:

§ 1132.15 Fluid milk product.

"Fluid milk product" means milk (including concentrated milk), skim milk (including reconstituted skim milk), buttermilk, filled milk, milk drinks (plain or flavored), cream, or any fluid mixture of cream and milk or skim milk (except storage cream, aerated cream products, egg nog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers): *Provided*, That when any such product is modified by the addition of nonfat milk solids the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of an unmodified product of the same nature and butterfat content. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

6. A new § 1032.18 is added as follows:

§ 1032.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of no fat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1132.30, paragraph (f) is revised as follows:

§ 1132.30 Reports of receipts and utilization.

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the route disposition of Class I milk outside the marketing area and a statement showing separately in-area and outside area route disposition of filled milk.

8. In § 1132.31, paragraph (c) is revised as follows:

§ 1132.31 Other reports.

(c) Each handler operating a partially regulated distributing plant shall report pursuant to § 1132.30 including a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and pursuant to § 1132.31(b)(1) in the event that such handler does not elect at the regular time of reporting pursuant to § 1132.30 to pay amounts computed pursuant to § 1132.62 (b), except that receipts in Grade A milk from dairy farmers and payments to such dairy farmers shall be reported in lieu of receipts from and payments to producers.

9. In § 1132.32, paragraphs (b) and (c) are revised as follows:

§ 1132.32 Records and facilities.

(b) The weights and butterfat and other content of all milk, skim milk,

cream and other milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) on hand at the beginning and end of each month; and

10. In § 1132.44, subparagraph (5) of paragraph (e) is revised as follows:

§ 1132.44 Transfers.

(e) * * *

(5) For purposes of this paragraph (e), if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

11. In § 1132.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (i), of paragraph (a) are revised as follows:

§ 1132.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that

were not subtracted pursuant to subparagraph (3)(iv) of this paragraph.

(a) For which the handler requests Class II utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from pool plants of other handlers, receipts from a cooperative association in its capacity as a handler pursuant to § 1132.12(c) and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph:

12. Section 1132.61 is revised as follows:

§ 1132.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraphs (a) or (b) of this section except as specified in paragraphs (c) and (d).

(a) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of

the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions.

(b) A distributing plant meeting the requirements of § 1132.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order;

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

13. In § 1132.62, paragraphs (a) (1) (i) and (b) are revised as follows:

§ 1132.62 Obligations of handler operating a partially regulated distributing plant.

(a)

(1) (i) The obligation that would have been computed pursuant to § 1132.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall

be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1132.70(e) and a credit in the amount specified in § 1132.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph, and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

14. Section 1132.83 is revised as follows:

§ 1132.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.61, 1132.62, 1132.84, and 1132.86, and out of which he shall make all payments pursuant to §§ 1132.85 and 1132.86: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

15. In § 1132.90 paragraphs (a) and (d) are revised as follows:

§ 1132.90 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives

the handler's utilization report on the skim milk and butterfat involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15) (A) of the act, a petition claiming such money.

PART 1133—MILK IN THE INLAND EMPIRE MARKETING AREA

1. Section 1133.7 is revised to read as follows:

§ 1133.7 Plant.

"Plant" means the land, buildings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained primarily for receiving, processing or packaging of fluid milk and milk products (including filled milk). However, an establishment that is separate from the foregoing operating unit and used only for transferring bulk milk from one tank truck to another shall not be a plant under this definition.

2. In § 1133.8, paragraphs (a) and (b) are revised to read as follows:

§ 1133.8 Pool plant.

"Pool plant" means any plant described in paragraph (a) or (b) of this section, other than the plant of a producer-handler, or a plant with respect to which the handler is exempt pursuant to § 1133.61, which is approved by an appropriate health authority for the receiving of milk qualified for distribution as Grade A milk in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which fluid milk products are processed or

packaged and from which during the month:

(1) Disposition of fluid milk products, except filled milk, on routes within the marketing area equals or exceeds the lesser of 250,000 pounds or 20 percent of the total receipts of Grade A milk from dairy farmers, cooperative associations pursuant to § 1133.15(d), and from pool supply plants and other plants forwarding the applicable percentage of receipts specified in paragraph (b) of this section to such plant and other pool distributing plants; and

(2) Total disposition of fluid milk products, except filled milk, on routes is 40 percent or more of such receipts in any of the months of February through August, inclusive, and 50 percent or more of such receipts in any of the months of September through January, inclusive.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which there is forwarded in the form of fluid milk products, to a pool distributing plant(s) 50 percent or more each of the skim milk and butterfat in its dairy farm supply of Grade A milk except filled milk, during the current month during the period of September through November, or 20 percent or more during the current month during the period December through August. Any such plant which has forwarded in the form of fluid milk products, more than 50 percent of such receipts except filled milk, for the entire period of September through November shall be a pool plant for the months of December through August immediately following unless the operator of such plant files with the market administrator, prior to the first day of any month(s), a written request to withdraw such plant from pool plant status for such month(s); and

3. Section 1133.9, paragraph (c) is revised to read as follows:

§ 1133.9 Nonpool plant.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

4. Section 1133.16 is revised to read as follows:

§ 1133.16 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a processing plant from which fluid milk products are distributed on routes in the marketing area but who receives no fluid milk products during the month from other dairy farmers or from any other source except by transfer from a pool plant, and who receives no nonfluid milk products for reconstitution into fluid milk products. Such person must provide proof satisfactory to the market administrator that the maintenance, care and management of the dairy ani-

mals and other resources necessary to produce his own farm milk production and the operation of the processing and distribution business is the personal enterprise and risk of such person.

5. Section 1133.17 is revised to read as follows:

§ 1133.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, skim milk drinks, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, skim milk or milk drinks (not including evaporated milk, condensed milk or condensed skim milk), fortified milk or skim milk (including "diet" foods), cream (sweet or sour), any mixture in fluid form of cream and milk or skim milk (except ice cream mix, frozen dessert mix, cocoa mixes, a product which contains 6 percent or more nonmilk fat (or oil), aerated products, eggnog and yogurt), which are neither sterilized nor in hermetically sealed metal containers.

6. A new § 1133.19 is added to read as follows:

§ 1133.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1133.30, subparagraph (3) of paragraph (a), and paragraph (b) are revised to read as follows:

§ 1133.30 Reports of receipts and utilization.

(a) * * *

(3) The utilization in each class of the quantities required to be reported, including separate statements of quantities (i) in inventories of fluid milk products on hand at the end of the month, (ii) in route disposition outside the marketing area, and (iii) of in-area and outside area route disposition of filled milk; and

(b) Each handler specified in § 1133.15 (b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

8. Section 1133.33 is revised to read as follows:

§ 1133.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, or his representative, during the usual hours of business, such accounts and records of his operations, including those of any other person upon whose utiliza-

tion the classification of skim milk and butterfat depends, and such facilities as, in the opinion of the market administrator, are necessary to verify or to establish the correct data with respect to:

(a) The information required to be reported pursuant to §§ 1133.30, 1133.31, and 1133.32;

(b) The weights and tests for butterfat and other contents of all milk, filled milk, and milk products handled, including filled milk; and

(c) Payments required to be made pursuant to §§ 1133.80 through 1133.88.

9. In § 1133.43, paragraph (b) is revised to read as follows:

§ 1133.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I unless the handler who first receives such skim milk or butterfat can establish to the satisfaction of the market administrator that such skim milk or butterfat should be classified otherwise:

(b) The burden shall rest upon each handler to establish the sources of milk and milk products (including filled milk) required to be reported by him pursuant to § 1133.30; and

(c) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

10. In § 1133.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1133.44 Transfers and diversions.

(e) * * *

(5) For purposes of this paragraph, if the transferred order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

11. In § 1133.46, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised to read as follows:

§ 1133.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1133.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1133.41(c)(5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(4) Subtract, in the order specified below, in sequence beginning with Class III from the pounds of skim milk remaining in Classes II and III, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph;

(a) For which the handler requests Class II or Class III utilization; or

(b) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph;

(ii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class II or Class III utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (3)(iv) or (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk

in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3)(v) or (4)(ii) of this paragraph:

12. In § 1133.51, paragraph (d)(2) is revised to read as follows:

§ 1133.51 Class prices.

(d) * * *

(2) Determine the total pounds of milk and milk products (including filled milk) disposed of from pool plants as Class I milk (excluding shrinkage, unaccounted for milk, and any duplications resulting from interhandler transfers) during the same 2 months;

13. Section 1133.61 is revised to read as follows:

§ 1133.61 Plants subject to other Federal orders.

(a) Except as specified in paragraphs (b) and (c), the provisions of this part shall not apply to any distributing or supply plant which would be subject to the classification, pricing and payment provisions of another order issued pursuant to the Act, unless a greater volume of fluid milk products, except filled milk, are disposed of on routes or to pool plants in the Inland Empire marketing area than in the marketing area regulated pursuant to such other order.

(b) The operator of a plant specified in paragraph (a) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

14. In § 1133.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1133.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1133.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1133.70(e) and a credit in the amount specified in § 1133.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class III price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

15. Section 1133.63 is revised to read as follows:

§ 1133.63 State institutions.

A State owned and operated institution or establishment which processes or packages skim milk and butterfat distributed solely on its premises or those of other State institutions or establishments shall be exempt from all provisions of this part. Skim milk and butterfat received from institutions at pool

plants shall be treated as other source milk received from a producer-handler, and fluid milk products disposed of by a handler to such institutions shall be classified on the same basis as though disposed of to a producer-handler.

16. Section 1133.83 is revised to read as follows:

§ 1133.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1133.61, 1133.62, 1133.84, and 1133.86 and out of which he shall make all payments to handlers pursuant to §§ 1133.85 and 1133.86.

17. In § 1133.89, paragraphs (a) and (d) are revised to read as follows:

§ 1133.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money:

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of obligation;

(2) The month(s) during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claims were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. Section 1134.9 is revised to read as follows:

§ 1134.9 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section, except the plant of a producer-handler or the plant of a handler exempt under § 1134.61.

(a) Any plant hereinafter referred to as a "distributing pool plant," in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as fluid milk products, except filled milk, on routes, and

(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as fluid milk products, except filled milk, on routes in the marketing area; and

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).

2. Section 1134.10 is revised to read as follows:

§ 1134.10 Nonpool plant.

"Nonpool plant" means any milk, or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued under the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued under the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant.

3. Section 1134.16 is revised to read as follows:

§ 1134.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, reconstituted milk or skim milk fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mixes, frozen cream, a product which contains 6 percent or more nonmilk fat or oil, aerated cream, egg-nog, cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product), which are neither sterilized nor in hermetically sealed containers.

4. A new § 1134.19 is added to read as follows:

§ 1134.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

5. In § 1134.30, subparagraph (5) of paragraph (a) and paragraph (c) are revised to read as follows:

§ 1134.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported under this section, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk. Such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

6. Section 1134.33 is revised to read as follows:

§ 1134.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, filled milk and milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products and filled milk on hand at the beginning and end of each month; and

(d) Payments to producers, or to cooperative associations, including any deductions, and the disbursement of money so deducted.

7. In § 1134.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1134.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to another class shall be classified as Class III; and

8. Section 1134.46 is revised to read as follows:

§ 1134.46 Allocation of skim milk and butterfat classified.

After making the computations under § 1134.45 the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler under § 1134.11 (c) and (d) which was not received at a pool plant and the classification of milk received from producers, from a pool plant operated by a cooperative association and from cooperative association handlers under § 1134.11(d) at a pool plant(s) for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III under § 1134.41 (c) (7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4) (v) of this paragraph, as follows:

(i) From the utilization comparable under such other order if the products are not classified as Class I under the other order;

(ii) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(iii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(5) Subtract in sequence beginning with Class III in the order specified below, from the pounds of skim milk remaining in Class III and Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, for which the handler requests Class III utilization, but not in excess of the pounds of skim milk remaining in Class III and Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4) (iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers and in receipts of fluid milk products in bulk from other order plants, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (4) (v) of this paragraph, in excess of similar transfers or diversions to such plant, but not in excess of the pounds of skim milk remaining in Class III (and Class II), if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the order;

(6) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted under subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining

in each class, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted under subparagraph (4) (iv) or (5) (i) or (ii) of this paragraph.

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products or filled milk in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4) (v) or (5) (iii) of this paragraph:

(i) Such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class III and Class II combined;

(a) The estimated utilization of skim milk in each class by all handlers, as announced for the month under § 1134.22(1); or

(b) The pounds of skim milk remaining in each class at the pool plant of the handler;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants according to the classification assigned under § 1134.44;

(11) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk contained in milk received from producers, and from cooperative associations under § 1134.11(d) subtract such excess from the remaining pounds of skim milk in series beginning with Class III. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined under paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

9. Section 1134.61 is revised to read as follows:

§ 1134.61 Exempt plants.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b), and (c) of this section the provisions of this part shall not apply except as specified in paragraphs (d) and (e):

(a) Any distributing plant from which less than an average of 200 pounds per day of Class I milk (except filled milk) is disposed of on routes in the marketing area during the month.

(b) Any distributing plant which would be subject to the classification and pricing provisions of another order issued under the Act, unless such plant is qualified as a pool plant under § 1134.9(a) and more Class I milk (except filled milk) is disposed of from such plant on routes in the Western Colorado marketing area than in the marketing area defined under such other order.

(c) Any plant qualified under § 1134.9(b) for any portion of the period of March through August, inclusive, that

the milk at such plant is subject to the classification and pricing provisions of another order issued under the Act.

(d) The operator of a plant specified in paragraphs (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (b), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of the receipts of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

10. In § 1134.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1134.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed under § 1134.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1134.70(e) and a credit in the amount specified in § 1134.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued under the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

11. Section 1134.83 is revised to read as follows:

§ 1134.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers under §§ 1134.61, 1134.62, 1134.84, and 1134.86 and out of which he shall make all payments under §§ 1134.85 and 1134.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1134.89, paragraphs (a) and (d) are revised to read as follows:

§ 1134.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the skim milk and butterfat with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the names of such pro-

ducer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, under section 8c (15) (A) of the Act, a petition claiming such money.

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. In § 1136.8 paragraph (c) is revised to read as follows:

§ 1136.8 Producer-handler.

(c) The operation of the milk (including filled milk) production, processing and distributing facilities are under the complete and exclusive control of such person and at his sole risk.

2. Section 1136.10 is revised to read as follows:

§ 1136.10 Approved plant.

"Approved plant" means a plant which either receives milk from dairy farmers or possesses the approval of any duly constituted health authority for the processing or packaging of Grade A fluid products, and (a) in which milk or milk products (including filled milk) are processed or packaged and from which any fluid milk product is disposed of during the month on routes in the marketing area, or (b) in which milk is received or processed and from which milk or skim milk is shipped during the month to a plant described in paragraph (a) of this section.

3. Section 1136.11 is revised to read as follows:

§ 1136.11 Pool plant.

"Pool plant" means:

(a) An approved plant, except the plant of a producer-handler as described in § 1136.8, from which during the month there is disposed of on routes fluid milk products, except filled milk, equal to not less than 50 percent of the receipts during the month at such plant of producer milk, producer milk diverted therefrom by the plant operator and receipts at the plant of fluid milk products, except filled milk, from plants described pursuant to paragraph (b) of this section, and there are disposed of on routes in the marketing area fluid milk products, except filled milk, equal to not less than 15 percent of the total fluid milk product disposition, except filled milk, from the plant on routes. If any cooperative association operating an approved plant

as defined in § 1136.10(a) causes producer milk to be delivered to a pool plant pursuant to this paragraph operated by another handler, such producer milk shall be included for the computations made pursuant to this paragraph for such cooperative association's plant along with the receipts of producer milk at such cooperative association's plant, and the quantity of such milk calculated as Class I milk pursuant to § 1136.22(h) shall be included for such computations along with the fluid milk products, except filled milk, disposed of on routes from such cooperative association's plant. If such a cooperative association operates more than one approved plant as defined in § 1136.10(a), such producer milk and Class I milk shall be included in the computation for whichever plant the cooperative association requests in writing to the market administrator. If no such written request is made, such producer milk and Class I milk shall be prorated among the plants. If a handler operates more than one approved plant, the combined receipts and fluid milk products disposition, except filled milk, of any of such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if the handler in writing so requests the market administrator.

(b) An approved plant from which during the month fluid milk products, except filled milk, equal to not less than 50 percent of the total of receipts at the plant from dairy farmers meeting the inspection requirements described in § 1136.7, milk diverted pursuant to § 1136.13 by the handler operating the plant and other fluid milk products, except filled milk, qualified for distribution for fluid consumption received at the plant are shipped to a plant described in paragraph (a) of this section: *Provided*, That a plant which so qualifies in each of the months of August through January as a pool plant shall be a pool plant in each of the following months of February through July unless the operator requests in written notice to the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

4. In § 1136.12 the introductory text preceding paragraph (a) is revised to read as follows:

§ 1136.12 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

5. Section 1136.15 is revised to read as follows:

§ 1136.15 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, cream (sweet or sour) except frozen cream, concentrated milk (fresh or frozen), fortified

milk or skim milk, reconstituted milk or skim milk, or any mixture in fluid form of milk, skim milk and cream (except ice cream, ice cream mix, eggnog, a product which contains 6 percent or more non-milk fat (or oil), aerated cream, evaporated or condensed milk (plain or sweetened), and sterilized products in hermetically sealed containers).

6. A new § 1136.18 is added to read as follows:

§ 1136.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1136.30, subparagraph (2) of paragraph (a) is revised to read as follows:

§ 1136.30 Reports of sources and utilization.

(a) . . .

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

8. In § 1136.31, paragraph (c) is revised to read as follows:

§ 1136.31 Other reports.

(c) Each handler specified in § 1136.9 (a) (2) who operates a partially regulated distributing plant shall report as required in § 1136.30, except that receipts of milk produced in compliance with the inspection requirements of a duly constituted health authority for fluid consumption shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

9. In § 1136.42, paragraph (c) and subparagraph (5) of paragraph (d) are revised to read as follows:

§ 1136.42 Transfers.

(c) If transferred in bulk form as milk, filled milk, skim milk, or cream to a nonpool plant which is neither an order plant nor a producer-handler plant, shall be classified as Class I milk unless the requirements of subparagraphs (1), (2) and (3) of this paragraph are met, in which case the skim milk and butterfat so transferred shall be classified in accordance with the assignment resulting from subparagraph (4) of this paragraph:

(d) . . .

(5) For purposes of this paragraph (d), if the transferee order provides for only two classes of utilization, skim milk

and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I and skim milk and butterfat allocated to Class II under the other order shall be classified as Class III; and

10. In § 1136.44, subparagraphs (2), (3), (4), (7), and (8) of paragraph (a) are revised to read as follows:

§ 1136.44 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1136.43, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1136.9 (b) and (c) which was not received at a pool plant and the classification of milk received from producers and from cooperative association handlers pursuant to § 1136.9 (c) by each handler (or pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1136.41(c) (5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (i) (d) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1136.41 (c) (8) plus two percent of such receipts (weight of an equal volume of a like unmodified product of the same butterfat content);

(ii) From Class I milk, the remainder of such receipts; and

(iii) In the event that packaged other order milk receipts (including filled milk) are in excess of the total amount subtracted pursuant to § 1136.44(a) (2) (i) and (ii), the remaining quantity shall be subtracted from the utilization remaining in Class III and then Class II;

(3) Subtract, in the order specified below, the pounds of skim milk in each of the following:

(i) From the pounds of skim milk remaining in each class, in series beginning with Class III:

(a) Other source milk in a form other than that of a fluid milk product;

(b) Receipts of fluid milk products (except filled milk) not qualified for fluid consumption, and receipts of fluid milk products from unidentified sources;

(c) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order, and from exempt plants as defined in § 1136.60(a);

(d) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(e) Receipts of reconstituted skim milk in filled milk from other order

plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(ii) From the pounds of skim milk remaining in Class II and Class III, beginning with Class II, receipts from pool plants of other handlers (or other pool plants, if applicable) in the form of cottage cheese;

(4) Subtract, in the order specified below in sequence beginning with Class III, from the pounds of skim milk remaining in Classes II and III but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (i) (d) of this paragraph, for which the handler requests Class III utilization;

(ii) Receipts of fluid milk products from an unregulated supply plant, that were not subtracted pursuant to subparagraph (3) (i) (d) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers (or other pool plants, if applicable), and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3) (i) (e) of this paragraph;

(iii) Receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3) (i) (e) of this paragraph, in excess of similar transfers to such plant, if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated plants which were not subtracted pursuant to subparagraph (3) (i) (d) or (4) (i) or (ii) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (3) (i) (e) or (4) (iii) of this paragraph:

11. Section 1136.61 is revised to read as follows:

§ 1136.61 Plants where other Federal orders may apply.

Any plant described by paragraph (a) or (b) of this section shall be exempt from § 1136.11, except as specified in paragraphs (c) and (d):

(a) Any plant which does not dispose of a greater volume of Class I milk, except filled milk, on routes in the Great Basin marketing area than in the marketing area regulated pursuant to such other order; and

(b) Any plant during the months of February through July which qualifies as a pool plant only pursuant to the proviso of § 1136.11(b).

(c) The operator of a plant specified in paragraph (a) or (b) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

12. In § 1136.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1136.62 Obligations of handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1136.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of

the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1136.70(e) and a credit in the amount specified in § 1136.82(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to a pool plant) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

13. Section 1136.81 is revised to read as follows:

§ 1136.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.61, 1136.62, 1136.82, and 1136.84, and out of which he shall make all payments pursuant to §§ 1136.83 and 1136.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

14. In § 1136.87, paragraphs (a) and (d) are revised to read as follows:

§ 1136.87 Termination of obligations.

The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in such obligation,

unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. Section 1137.7 is revised to read as follows:

§ 1137.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a producer-handler or the plant of a handler exempt pursuant to § 1137.61.

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which (1) an amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as fluid milk products, except filled milk, on routes, and (2) 10 percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as fluid milk products, except filled milk, on routes in the marketing area; and

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February (under either this part or under Part 1135 of this chapter, regulating the handling of milk in Colorado Springs-Pueblo marketing area) shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March

through August unless it fulfills the shipping requirements of this paragraph for such month.

2. Section 1137.8 is revised to read as follows:

§ 1137.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1137.7.

3. Section 1137.11 is revised to read as follows:

§ 1137.11 Producer-handler.

(a) "Producer-handler" means any person who operates a dairy farm and a milk processing plant which distributes fluid milk products on routes in the marketing area and who:

(1) Receives no fluid milk products during the month from dairy farmers;

(2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and

(3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

4. Section 1137.14 is revised to read as follows:

§ 1137.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, filled milk, concentrated milk, reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), sweet cream, sour cream and sour cream mixtures disposed of under a Grade A label, half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, a product which contains 6 percent or more nonmilk fat (or oil), aerated cream, frozen cream, plastic cream, eggnog and sterilized products

packaged in hermetically sealed containers).

5. Section 1137.15 is revised to read as follows:

§ 1137.15 Route.

"Route" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product, other than a delivery to a pool plant or a nonpool plant: *Provided*, That packaged fluid milk products, except filled milk, that are transferred to a distributing pool plant from a plant with route disposition in the marketing area, and which are classified as Class I under § 1137.44(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying it as a pool distributing plant under § 1137.7(a)(1).

6. A new § 1137.16 is added to read as follows:

§ 1137.16 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

7. In § 1137.30, subparagraph (5) of paragraph (a), and paragraph (c) are revised to read as follows:

§ 1137.30 Reports of receipts and utilization.

(a) * * *

(5) The utilization of all skim milk and butterfat required to be reported by this section, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk;

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

8. In § 1137.44, subparagraph (5) of paragraph (d) is revised to read as follows:

§ 1137.44 Transfers.

(d) * * *

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and

butterfat allocated to another class shall be classified as Class III; and

9. In § 1137.46, subparagraphs (2), (3), (4), (5), (6), (8), and (9) of paragraph (a) are revised to read as follows:

§ 1137.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1137.45, the market administrator shall determine each month the classification of milk received from producers by each cooperative association handler pursuant to § 1137.9 (c) and (d) which was not received at a pool plant and the classification of milk received from producers, from a pool plant operated by a cooperative association and from cooperative association handlers pursuant to § 1137.9(d) at a pool plant(s) for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1137.41(c)(7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (4)(v) of this paragraph as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order.

(5) Subtract, in sequence beginning with Class III in the order specified below, from the pounds of skim milk remaining in Class III and Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not

subtracted pursuant to subparagraph (4)(iv) of this paragraph, for which the handler requests Class III utilization, but not in excess of the pounds of skim milk remaining in Class III and Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (4)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I by 1.25; and

(b) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from another order plant, that were not subtracted pursuant to subparagraph (4)(v) of this paragraph, in excess of similar transfers or diversions to such plant, but not in excess of the pounds of skim milk remaining in Class III (and Class II), if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the other order;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (4)(iv) or (5)(i) or (ii) of this paragraph. (For purposes of this subtraction at a pool plant(s) operated by a cooperative association, skim milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds of skim milk in each class prorata to the market average utilization announced pursuant to § 1137.22(1));

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from another order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraphs (4)(v) or (5)(iii) of this paragraph:

§ 1137.61 Exempt plants.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except as specified in paragraphs (d) and (e):

(a) A plant meeting the requirements of § 1137.7(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A plant meeting the requirements of § 1137.7(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(c) Any distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of on routes in the marketing area during the month; and

(d) Each handler operating a plant described in paragraph (a), (b), or (c) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require (in lieu of reports pursuant to §§ 1137.30 through 1137.32) and allow verification of such reports by the market administrator.

(e) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month and amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class III price.

10. In § 1137.62, paragraphs (a) (1) (i) and (b) are revised to read as follows:

§ 1137.62 Obligations of a handler operating a partially regulated distributing plant.

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1137.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1137.70(e) and a credit in the amount specified in § 1137.84(b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content;

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class III price.

11. Section 1137.83 is revised to read as follows:

§ 1137.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1137.61, 1137.62, 1137.84, and 1137.86 and out of

which he shall make all payments pursuant to §§ 1137.85 and 1137.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

12. In § 1137.89, paragraphs (a) and (d) are revised to read as follows:

§ 1137.89 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. In § 1138.8 paragraph (c) is revised to read as follows:

§ 1138.8 Producer-handler.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided*, That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until

It has been a nonpool plant for 12 consecutive months.

2. In § 1138.10, paragraphs (a) and (b) are revised as follows:

§ 1138.10 Pool plant.

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less, are made in the marketing area on routes; *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant;

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk is disposed of on routes during the month and Class I milk, except filled milk, disposed of in the marketing area on routes is at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

3. Section 1138.11 is revised to read as follows:

§ 1138.11 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.10 and which is not an other order plant nor a producer-handler plant.

4. Section 1138.14 is revised to read as follows:

§ 1138.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, reconstituted milk or skim milk,

fortified milk (including "dietary" milk products), concentrated milk, sweet cream and any mixture of milk, skim milk, or sweet cream except frozen cream, frozen dessert mixes, ice cream mix, evaporated or condensed milk or skim milk, aerated cream products, and sterilized products in hermetically sealed containers; and eggnog, yogurt and sour cream and cultured sour cream mixes shall be considered as fluid milk products only if disposed of under a Grade A label. This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

5. A new § 1138.16 is added to read as follows:

§ 1138.16 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

6. In § 1138.30, subparagraph (6) of paragraph (a) and paragraph (b) are revised to read as follows:

§ 1138.30 Reports of receipts and utilization.

(a) * * *

(6) The route disposition of fluid milk products in the marketing area and a statement showing separately in-area and outside area route disposition of filled milk;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk shall be reported in lieu of those in producer milk such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area; and

7. Section 1138.36 is revised to read as follows:

§ 1138.36 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

8. In § 1138.44, subparagraph (5) of paragraph (e) is revised to read as follows:

§ 1138.44 Transfers.

(e) * * *

(5) For purposes of this paragraph, if the transferee order provides for more

than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and skim milk and butterfat allocated to other classes shall be classified as Class II; and

9. In § 1138.46, subparagraphs (2), (3), (4), (7), and the introductory text of subparagraph (8) preceding subdivision (1), of paragraph (a) are revised to read as follows:

§ 1138.46 Allocation of skim milk and butterfat classified.

(a) * * *

(2) Subtract from the remaining pounds of skim milk in each class as follows:

(i) From Class I milk, the pounds of skim milk that were received from a producer-handler as packaged, certified fluid milk products and were disposed of in the same form as received;

(ii) From Class II milk, with respect to the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3) (v) of this paragraph, the lesser of the pounds remaining or 2 percent of such receipts; and

(iii) From Class I milk, the remainder of the receipts specified in subdivision (ii) of this subparagraph;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order, except that subtracted pursuant to subparagraph (2) (i) of this paragraph;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3) (iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to

subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk, if Class II utilization was requested by the operator of such plant and the handler;

(7)(i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) or (4)(i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk

products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs (3)(v) or (4)(iii) of this paragraph pursuant to the following procedure:

10. Section 1138.61 is revised to read as follows:

§ 1138.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all the provisions of this part, except as specified in paragraphs (c) and (d):

(a) Any plant qualified pursuant to § 1138.10(a) which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order;

(b) Any plant qualified pursuant to § 1138.10(b) for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part;

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(d) Each handler operating a plant specified in paragraph (a), if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price applicable at the nonpool plant and subtract its value at the Class II price.

11. In § 1138.62, paragraphs (a)(1)(i) and (b) are revised to read as follows:

§ 1138.62 Obligations of handler operating a partially regulated distributing plant.

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1138.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1138.70(e) and a credit in the amount specified in § 1138.84 (b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant less the value of such skim milk at the Class II price.

12. Section 1138.83 is revised to read as follows:

§ 1138.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1138.61, 1138.62, 1138.84, and 1138.86 and out of which he shall make all payments pursuant to §§ 1138.85 and 1138.86: *Provided*, That any payments due any handler shall be

offset by any payments due from such handler.

13. In § 1138.89, paragraphs (a) and (d) are revised to read as follows:

§ 1138.89 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the han-

dlers last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the names of such producers or cooperative associations, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this

part shall terminate two years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

Signed at Washington, D.C., on June 17, 1969.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

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